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3. That the affairs of the Society be conducted by a Council, consisting of a permanent President and Vice-President, and twelve other members, including a Treasurer and Secretary, all of whom shall be elected, the first two at the general meeting next after a vacancy shall occur, and the twelve other members at the general meeting annually.
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PUBLICATIONS OF THE CHETHAM SOCIETY.

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- I. Travels in Holland, the United Provinces, England, Scotland, and Ireland, 1634-1635. By Sir William Brereton, Bart. Edited by EDWARD HAWKINS, Esq., F.R.S., F.S.A., F.L.S. pp. viii, 206.
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- IX. The Norris Papers. Edited by THOMAS HEYWOOD, Esq., F.S.A. pp. xxxiv, 190.

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- XII. The Moore Rental. Edited by THOMAS HEYWOOD, Esq., F.S.A. pp. lxx, 158.

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XV. The Holy Lyfe and History of Saynt Werburge, very frutefull for all Christen People to rede. Edited by EDWARD HAWKINS, Esq. pp. xxviii, 10, 242.

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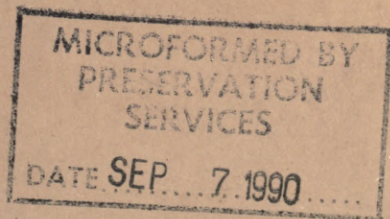
REMAINS
HISTORICAL & LITERARY
CONNECTED WITH THE PALATINE COUNTIES OF
LANCASTER AND CHESTER.

PUBLISHED BY
THE CHETHAM SOCIETY.

VOL. LXXVIII.

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TRACTS

WRITTEN IN THE CONTROVERSY RESPECTING THE
LEGITIMACY OF

A M I C I A,

DAUGHTER OF

HUGH CYVELIOK,

EARL OF CHESTER.

A.D. 1673 — 1679.

BY SIR PETER LEYCESTER, BART., AND
SIR THOMAS MAINWARING, BART.

Reprinted from the Collection at Peover.

EDITED, WITH AN
INTRODUCTION,

BY

WILLIAM BEAMONT, Esq.

PRINTED FOR THE CHETHAM SOCIETY.

M.DCCC.LXIX.





From the original picture at Tabley.

Leicester. 1665.

Leicester. 1666

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PART I.

PRINTED FOR THE CHETHAM SOCIETY.

M.DCCC.LXIX.



PRINTED BY CHARLES S. SIMMS,
MANCHESTER.

INTRODUCTION.

Stemmata quid faciunt quid prodest ordine longo
Sanguine censer, pictosque ostendere vultus
Majorum, et stantes in curribus Æmilianos?

THE Roman satirist, when he put this stinging question to his degenerate countryman, who with a long line of ancestry was living unworthy of it, had no idea of disparaging the value of an illustrious descent, and would heartily have admitted that those who lived mindful of their good name might look back with pride upon the Scipios, the Fabii and others of like honour from whom they sprang, and consider their birth a truly great inheritance. But to those who were leading lives unworthy of their ancestry his question was a withering satire.

Scarcely any civilized people can be named either in ancient or modern times that has failed to treasure up its family genealogies. The Jews, who we know had a religious sanction for doing so, preserved theirs with a sacred care. The Egyptians, we read, by the mouth of their priests at Memphis put to silence a vainglorious Greek,

when he boasted that he could show his pedigree for twelve generations, by producing and showing him that of Rameses which went back for seventeen. In classic times the old heathens were fond of tracing up their origin, first to heroes and then to demigods. That the Romans venerated a good ancestral name is abundantly evident from their poets and historians. Horace did not think his first address to Mæcenas, the patron of letters and the muses, complete until he had added to his other titles the distinction of being sprung from ancient kings.

Voltaire, who sneered at heraldry and called it "the science of fools with long memories," would probably have included genealogy in his sneer; but, notwithstanding this opinion of the witty Frenchman, a respect for a good pedigree, and a desire to possess one, has become rather an instinct than a passion among the nations of Western Europe. The Castilians boast of their "blue blood," and the French of their Faubourg St. Germain, and the man would be thought a real anomaly who should own himself, as the poet has it, one

————— whose ancient but ignoble blood
Has crept through scoundrels ever since the flood !

It may serve to shadow the universal allowance of the value of ancestry that the author of that popular drama, *The Rivals*, makes the thought of it recal, as it was fast oozing away, the fading courage of his frivolous hero "Bob Acres."

In the month of August 1385, or, according to the

satirist some years earlier,* there was begun in the court of the lord marshal of England the well-known case of Scrope and Grosvenor. Sir Richard Scrope, the complainant, charged his brother knight, sir Robert Grosvenor, with having usurped and worn his arms, a shield *azure* with a bend *or*, and challenged him to prove his title to it. Coat armour, at a time when knights and gentlemen cased in steel could only be recognized by the insignia on their shields, had an intrinsic value in itself. The king had "many marching in his coats" at Shrewsbury, and some of them, as we read, there paid a fatal penalty for the disguise. In the time of Richard II. heraldry was much accounted of as the handmaid of genealogy and family history, and the science saw its palmiest days. The Scrope and Grosvenor question therefore excited general interest, the whole country watching its progress, and awaiting the result with interest and anxiety. As the right to the disputed arms would depend upon usage, and this could only be proved by the

* ————— look at 'the Roll'

Which records the dispute

And the subsequent suit,

Commenced in 'Thirteen seventy-five' — which took root

In Le Grosvenor's assuming the arms Le Scroope swore

That none but *his* ancestors, ever before,

In foray, joust, battle, or tournament wore,

To wit '*On a Prussian-blue Field, a Bend Or;*'

While the Grosvenor averred that *his* ancestor bore

The same

(*Ingoldsby Legends*, 2nd series, p. 234.)

production of many witnesses, it is not to be wondered at that it continued *sub judice* for four years or more. During this interval evidence was given on one side or the other of the use of the controverted arms, not only in various parts of England but in many different and distant parts of the world. Witnesses were called who had beheld its blazonry borne before the walls of Acre in the crusades ; in northern France ; under the standard of the Black prince ; in the plains of Gascony and Poictou, and in many other famous places and fields of fame. The witnesses called were numerous and equal to the greatness of the occasion, for amongst them there appeared one sovereign prince, one duke, three earls, three barons, three mitred abbots, two priors, eleven bannerets, and more than one hundred and fifty knights, esquires, gentlemen and others, a roll which shows the great importance of the trial, and presents an array of witnesses such as no other case has perhaps ever seen either before or since. Under our altered estimate of its importance it might be more fitly dismissed with the words of a modern poet :

Men are like birds in their contests together,
And in questions of right will dispute for a feather !

Two centuries later there appeared in Europe two distinguished men, the Scaligers, father and son, both remarkable alike for their profound erudition and critical skill, and for their over-weening and consummate vanity. Julius, the father, was born in the castle of Ripa, near Verona, in the year 1484, and was the son of an illu-

minator of books and manuscripts, and compiler of geographical tables, named Benedict Bordonì. When he was forty years of age, and had by hard study in the course of a very active life acquired a vast fund of various knowledge, he conceived the idea of discarding and repudiating his real name and parentage, and of boldly creating for himself a new family and pedigree. With this end in view, his first step was to procure a grant of letters of naturalization. These letters, which he obtained in 1528, and in which he gave himself the high-sounding title of Julius Cæsar de Lescalle, he soon afterwards followed up by declaring himself the son of Benedict de la Scala, a personage whom he announced as a scion of the princely house of Verona and one of the most valiant captains of the fifteenth century, and who had been present at thirty-eight pitched battles and upwards of one hundred warlike expeditions and skirmishes. It mattered little that history and the chroniclers were alike silent as to the name, fame and achievements of Benedict de La Scala. "*Stat pro ratione voluntas*," was Scaliger's answer, so resolutely had he adopted this creation of his brain, and so entirely resolved was he to maintain it against all comers. It was a bolder work, and more dangerous to his reputation, than "scaling th' imminent deadly breach" could have ever been to his ancestor *La Scala*, had he been a real and not an imaginary personage. By some of the ablest of Scaliger's contemporaries it was said that his own age did not furnish his equal as a scholar, or antiquity show his

superior; and when he so stoutly maintained the reality of his mythical ancestor, he obtained, if not credence, at least that sort of indulgence, which is often conceded to one whose weak points are atoned for by very eminent merits. Neither the great Erasmus whom he first attacked, nor the famous Cardan against whom he last wrote, revenged themselves by publishing a single word against his family pretensions. When the elder Scaliger's life came to a close in the year 1558, his son and successor, Joseph Justus Scaliger, took up the family claim as "the quarrel of a true inheritor." But the son succeeded the father in another and far nobler inheritance than his vanity, the inheritance of his learning, in which he soon proved himself in scholarship more than his father's equal. In 1594, reducing into system the scattered notices in his father's various works, he appeared in print to defend his *princely* genealogy, and printed his most curious and interesting letter to Douza, *De vetustate et splendore gentis Scaligeræ*. This book, so full of arrogant and contemptuous assumptions, was not and could not indeed be expected to go unchallenged, and in the year 1607 the well-known scholar Scioppius led the onslaught upon it by publishing his *Scaliger Hypobolimæus, hoc est elenchus epistolæ Josephi Burdonis pseudo-Scaligeri de vetustate et splendore gentis Scaligeræ*. This work, in which Scioppius reckons up five hundred falsehoods in the *Epistola*, impressing each fresh figure upon the candidate for princely honours "tortore flagello," cut Scaliger to the quick; but he did not lose heart, and the next year he

put out his *Confutatio Stultissimæ Burdonum Fabulæ*, in which he refutes many of the statements in Scioppius's book, and deals admirably with the fringes of the question, but is evidently unable to establish the grand link which was to connect him with the princely Scaligers of Verona. It was evident that he was wounded, and that the hurt from his enemy's arrow had rankled and was to end fatally. In no long time after the victim died, and it was said that his death had been hastened by the mortification he had received from Scioppius's work, the irretrievable damage it had done to his reputation, and the ruin it had brought on his fictitious pedigree.

When the two mailed knights, "clad in complete steel," in the fourteenth century, engaged in the Scrope and Grosvenor controversy, they would have found themselves unequal to the contest except with those two sharp weapons, the tongue and the sword. But the Scaligers conducted theirs with the pen and the press, which marks a wide difference between their controversy and that which had preceded it.

The Amicia controversy, which in the seventeenth century agitated the county of Chester, and with which the present work has to do, was conducted by the heads of the two knightly families of Leycester and Mainwaring.

The Scaligers and their antagonists were scholars of world-wide renown, but sir Peter Leycester and sir Thomas Mainwaring, who now buckled on their armour to do battle for or against Amicia, were neither professed

scholars nor lawyers, but country gentlemen, who had made antiquities their study as an amusement. Each of them, however, was well read in the old chroniclers and historians, and so was well able to conduct his case with his own pen and from his own resources. Their quality as country gentlemen, and their ability thus to conduct it, marks another step in the conduct of a genealogical controversy. The Scrope and Grosvenor combatants appealed to the lord marshal's court of arms; the Scaligers appealed to the judgment of scholars; the Cheshire knights appealed to the county, which watched their skill in the use of their weapons, applauded or condemned each tilt in the combat, and awaited with interest the final result.

In many a Cheshire house the successive papers, as they appeared, were looked for, much as the successive numbers of a popular periodical are looked for now. Doubtless much correspondence passed about the controversy at the time, but, whatever it was, the editor has failed to discover any traces of it, and probably the whole has now perished. One satirical ballad, to be afterwards alluded to, having outlived more serious notices, has alone survived to our time, to show us that some of the contemporaries of the two competitors found an amusing side to the controversy, and made merry over it.

The "Scrope and Grosvenor" controversy was carried on to establish a right; the "Scaliger" to defend a fiction; and the "Amicia" to settle a disputed fact. What that

disputed fact was will be stated shortly, and will appear more at large in the course of the following work, in which the several papers of which it consisted will be printed.

But before proceeding further it may be as well to give a short sketch of the two champions who engaged in it.

Sir PETER LEYCESTER, then, who led the attack and carried it on to his death, was descended from a long line of knightly ancestors, sprung, as he believed, from the ancient earls of Leicester, but who, for more than three hundred years, had been settled at Nether Tabley in Cheshire. Sir Peter, who bore both his father's names, was born at the family seat on the 3rd March 1613, and on the 13th October 1629, when he was barely sixteen, he was entered as a gentleman-commoner at Brasenose college, Oxford, under the tutorship of the rev. Samuel Crane, afterwards successively rector of Mobberley and Alderley. As he did not take a degree, it is not exactly known at what period he quitted the university, but it is fair to infer from his subsequent career that the tutor had not neglected his pupil, nor the latter his opportunities. He appears to have brought with him from Oxford a taste for learning which he retained through life. According to a laudable practice common in those times, when a gentleman's education was not supposed to be complete without some knowledge of law, sir Peter repaired from the university to the inns of court, and on the 20th August 1632 he was admitted a member of the honourable society of Gray's inn. In 1642, that momen-

tous year of our history, sir Peter Leycester married Elizabeth, the daughter of lord Gerard, and from that time until the death of his father, he occupied himself in country pursuits, with as much quietness and privacy as the then troubled state of the country would allow. In 1647 he had the misfortune to lose his father, and he then removed with his family to the old house at Tabley. Here, surrounded by the scenes of his boyhood, and amid those congenial country pursuits which he loved, he devoted himself to books, and chose for his particular subject the study of history and antiquity, in which he soon found his university and legal studies stand him in much stead. Excluded by political circumstances, and by his own well-known disinclination to the then ruling powers, from public employment, he had no call made upon him either to serve the county as high-sheriff or his country in parliament. The same circumstances at this time also shut him out from the other public duties and offices which belonged to him as a country gentleman. Shocked at the extreme violence of some of the acts of the men in power, he thought, if he did not say,

——— when impious men bear sway
The post of honour is a private station.

But “sweet are the uses of adversity” to those who know how to use them as sir Peter did, when it led him more zealously, and with less fear of interruption, to devote himself to the prosecution of the pursuits of his choice, and for which, by natural taste and a well cultivated

mind, he was so admirably adapted. It being part of his design to illustrate the antiquities of his native county, and to give a succinct account of its earls and of some of its principal leading families, he directed his earliest attention to the complete verification and authentication of his own pedigree, and to establishing its several links, by reference to those original charters and documents which were either in his own possession or in the possession of others to whose archives he had access. He next took care, by the same means, to note and correct the pedigrees of the other Cheshire families with whom, in blood or by marriage, he was more immediately connected. Resolving to take nothing upon trust or without actual proof, through an innate taste and fondness for his work and an antiquary's diligence, which gave him great adroitness in it, he had, before the year 1649, fully established his fame as an exact and accurate inquirer; a title which was fully recognised by those best able to judge of it, Dugdale, Vernon and their fellow antiquaries. During the three following years, with unwearied diligence, he employed himself in collecting materials for the history of Bucklow hundred, in which he scrupulously rejected every alleged fact and circumstance which he did not find fully borne out and supported by original documents. But the political party with whom he could not sympathise were at this time supreme, and sir Peter being obnoxious to them as a royalist, was now dragged from his favourite pursuits and his quiet home, and carried prisoner to Chester

castle. How long he was immured does not appear, but this was the time

When nobles and knights, so proud of late,
Must fine for freedom and estate.

As of others at that time, so of sir Peter the *fiat* went forth :

Right heavy shall his ransome be.

And accordingly, in the year 1655, we find him compelled to compound for his estates, and to pay the sum of 778*l.* 18*s.* 4*d.*; a sum which, compared with the extent of his estate, was large even then, but which, expressed in the value of our present money, would appear much larger now. (*Hist. Cheshire*, vol. i. p. 461, in notis, and Catalogue of Sequestrations.)

He appears after this to have been allowed to remain for a time in peace, and, employing himself with double diligence in collecting additional materials for his history, he eagerly profited by his leisure. From the year 1657 until the Restoration, he was engaged in arranging, digesting and still further augmenting all his vast and various manuscript collections.

Having suffered for his loyalty he hailed with great satisfaction the restoration of the monarchy, and on the 10th August 1660, barely two months after that event, his majesty was pleased to create him a baronet, and, had he wished it, the king would have probably added to it some office of honour and profit. But

— loyalty is still the same
Whether it win or lose the game ;

and having been swayed in his loyalty by no mercenary thoughts, he declined any remuneration for his losses, and was content to take the sense of having done his duty for his reward. But the cause which had debarred him from the county magistracy, and deprived him of the opportunity of public usefulness, no longer existing, sir Peter, having qualified himself to act as a justice of the peace, and having probably been made a deputy-lieutenant, was very soon afterwards elected chairman of the quarter sessions of the peace for the county of Chester, which office he continued for some years to fill.

In the hurry and bustle which necessarily succeeded the commencement of the new reign (for new it was, except by the fiction which made the king's accession date from the year 1649), there was a short lull in sir Peter's literary pursuits, but it did not hold him long, for in 1664 his love of study revived with all its old ardour, and he again set himself vigorously to work to illustrate and restore the antiquities of his native county. He continued augmenting his stock of materials until 1672, and the next year he gave them to the world, under the title of *Historical Antiquities, in two books: the first treating in general of Great Britain and Ireland; the second containing particular remarks concerning Cheshire*. Among the *prologomena* of this work were original lists of the county officers, an admirable history of the Norman

earldom, and, in the latter part, the parochial topography of the entire hundred of Bucklow.

This work, the only one, except his contributions to the Amicia controversy, which he ever published, sets in a shining light sir Peter's taste, ability and industry as a writer, and by its general accuracy and exactness shows how well he was fitted to undertake it. The work bore evidence to his minute and extensive acquaintance with the old chronicles, and showed how scrupulously his reading had enabled him to avail himself of their rather uninviting contents.

To quote the language of Dr. Ormerod, a successor worthy to tread in sir Peter's footsteps, and fully capable of appreciating his merits :

The subject of his investigations lay immediately around him, and had been known to him from childhood. Nearly all the families of the hundred must have been his personal acquaintance, and some of the most important were his near kinsmen. The actual evidences of the several houses appear to have been at his command, and he transcribed them with a patient labour which only they who have traced his progressive collections can appreciate.

His peculiar excellence seems to have been that in the pursuit of his object he uniformly resorted to original documents, and was never deterred from toiling through them, though of the most uninteresting and voluminous description ; that he built his accounts solely on what had been proved by regular evidence, despising the vague traditions which before his time had rendered topography contemptible ; that he conveyed his information in a clear and unadorned narrative, unburdened by extraneous ornaments of diction, or by facts which might amuse the reader but were foreign to his purpose ; and that on every occasion he held

religiously to what he believed to be the truth, however unwelcome it might be, or however its promulgation might jar with his comforts or his interest.

It was to this quality that we owe the Controversy which is the subject of the following tracts, and we may concur in the character given of him, that "he was indefatigable in searching after truth and fearless in asserting it," and that "his merits have elevated sir Peter Leycester above every topographer that preceded him." (*Hist. Cheshire*, vol. i. p. 462.)

The voluminous and well digested mass of papers on a great variety of subjects, which sir Peter collected and which still remain at Tabley contain, amongst others, prayers and religious meditations on various occasions; biographical sketches of his contemporaries; charges to the grand jury, delivered in his capacity of chairman of the quarter sessions; plans of a connected course of historical reading, which show his own manner of study; large collections of original documents and abstracts; and numerous manuscripts of a private and domestic character.

"*Studia alia aliorum me ducunt, Theologiam cæteris omnibus præfero cujus studium humano generi apprime necessarium duco,*" wrote sir Peter in his address to the judges before one of his Amicia tracts. In 1621 sir Peter Warburton, one of his neighbours and a judge of the Common Pleas, died, and when an account was afterwards taken of his library, it was found to contain more books of divinity than of law; and the will of Philip

Mainwaring, of which a short extract will be given hereafter, gives evidence of a similar leaning to the gospel rather than the law. These examples, which might be largely multiplied, justify the poet's estimate of the chivalry of that day :

Our ancestors, a gallant Christian race,
Patterns of every virtue, every grace,
Confessed a God !

Theirs was a serious age, and sir Peter Leycester in that respect clearly sympathised with it. Running into none of those wild religious excesses into which, in that age, many others were betrayed, he showed by his whole career that he was a pious and devout Christian, and that the religious reading which he loved, influenced and refined his whole conduct. At the very outset of his career the political horizon was dark and lurid ; we need not wonder, therefore, that its effect on sir Peter's mind was to deepen his impression of the necessity and value of the solace and comfort of religion. While others were hurried away by over-zeal to seek comfort in some new forms of faith, sir Peter held fast by the church of England, and adhered to her in the time of her greatest trial. His manuscripts, which show how much he was a man of prayer, abound with forms of private devotion, which he composed both when he was in prison and on many other occasions. This habit, which had solaced him in his trials in early and middle life, did not desert him in his grey hairs. In the year

1675, when the taper of life was fast waning, sir Peter, thinking with one of old, "dierum reliquias recolligere et deficientis ætatis fragmenta reponere ac terrena in celestia, transitoria in æterna felici communio commutare, et vespertinum offere sacrificium" (Southey's *Com. Place Book*, third series, p. 3), determined to build, and did build, the domestic chapel at Tabley, which still bears this inscription over the entrance door :

Exaudi Domine supplicationes nostras
Quandocunque manibus expansis
Ex hac domo sanctissimum nomen tuum
Invocabimus et cum exaudias miserere
Infinitæ bonitatis tuæ gratiâ Jesu Christi.
Amen. M.DC.LXXV.

Sir Peter's house at Tabley, built upon a small island in the park, appears to have been originally quadrangular, but only the eastern side of it now remains standing. To the left of the great entrance doorway there is a low wainscoted hall, of which about one fourth is occupied by a large oak staircase, which runs along two sides of the apartment. On the west side of the hall there is a large chimney-piece with the date 1619 upon it, which is ornamented with quaint carvings of various classical subjects, executed in the grotesque style of that age, and of which the colouring is as fanciful as the carving. Opposite to the fire-place there is a large bay window, with the family pedigree in stained glass emblazoned in it. The domestic chapel just mentioned stands towards the south. It is furnished with large bay windows at the sides, a pointed

window at the east end, and a bell turret at the west, and it bears in the interior a resemblance to a college chapel, but the congregation who assemble in it for worship are, and always have been, seated so as to separate the sexes, the men being placed on one side and the women on the other. The venerable hall, covered with its mantle of ivy, the picturesque chapel, the sequestered look of both, the calm lake in front, the woods and uplands beyond, all combine to give interest to the scene, and inspire a wish that it may continue to gladden the eyes of many a future generation of pilgrims who shall visit the hallowed home of the great antiquary, sir Peter Leycester.

Sir Peter's temper was genial and social, but it had its occasional infirmities, as we see by the taunt thrown out by sir Thomas Mainwaring (p. 288 *post*), and which seems confirmed by the expressions in which sir Peter at times indulges in the tracts. Sir Peter's judgment was sometimes obscured by his fondness for the discovery he had made and by his great desire to support it, in which case his firmness verged on obstinacy, and disturbed a temper even so generally equable as sir Peter Leycester's. And it is thought that this circumstance somewhat tended to embitter and shorten the last days of the great antiquary's life.

Sir Peter's lineaments have been preserved to us by a faithful portrait of him which still remains at Tabley, in the possession of his noble descendant, lord de Tabley, and of which an excellent engraving forms the frontispiece of the present volume. If it be true that a good

countenance is a good letter of recommendation, sir Peter could not have wanted any better letter than his face. It is the index of a mind in which rare intelligence is mingled with that benevolence which is not mere good nature, but which is "sense and spirit with humanity." The artist has thrown into his face as he sits on the seat of justice an expression of great dignity and firmness, without obscuring the milder and more genial traits of his character. A prisoner, conscious of guilt and standing at his tribunal, must have quailed before that dark, searching, lustrous eye, which, in his social moments and among his friends and brother antiquaries, must have lighted up his beautiful features with a glow of intelligence and brightness. The mouth is expressive of great firmness, a feature of his character which made him hold to his principles through the arduous times of the interregnum, and made him press perhaps a little too far his arguments against the lady Amicia. The artist (possibly sir Peter Lely) and his subject were happy in each other, and the result is a portrait so remarkable for its force and beauty, that it will dwell very long on the memory of whoever has once seen it.

In the year 1666 sir Peter altered the spelling of his surname from Leycester to Leicester, and a fac-simile of his two autographs is given under the portrait. He did not, however, always adhere to the altered spelling, as the tracts show.

In the old hall at Tabley, where he was born and where he had spent his life, sir Peter breathed his last on

the 11th October, 1678. He was buried in the family chapel at Great Budworth, and a very few weeks afterwards, she who had been his faithful partner through life was laid in the same tomb by his side, and both are commemorated by an epitaph, which may be seen in the *History of Cheshire*.

Sir THOMAS MAINWARING (sir Peter Leycester's strenuous opponent in the Amicia controversy), descended from a well-known Cheshire family which had been settled there from the Conquest, and many of whom had distinguished themselves in the camp and the court, first of their palatine sovereigns and then of our English kings, whom they had served both at home and abroad, was the son of Philip Mainwaring, esq., of Peover, at which place, or at Baddeley, his father's other seat, he was born on the 7th April 1623. Like sir Peter, he was sent to Oxford, and there entered as a commoner of Brasenose college on the 20th April 1637, at the unusually early age of fourteen. His great literary antagonist, sir Peter, had preceded him only eight years before. There was a remarkable similarity in the career of the two rivals. Like sir Peter, sir Thomas left the university without taking a degree; like him, he had not misused his opportunities; like him, he repaired from the university to the inns of court, where, like him, he was admitted of Gray's inn on the 2nd December 1640.*

* The entry calls him "Thomas Mainwaring of Chester city."

The fame of his great ancestor, Ralph Mainwaring, and of his marriage with Amicia, combined with the then prevailing custom that young gentlemen should repair to some inn of court to complete their education, had probably some share in drawing sir Thomas Mainwaring to drink in law at the fountain head.

The Norman kings held a supreme court of justice called, from the hall in their palace where it sat, the *aula regis*. In this court, where, by themselves or their deputies, they were supposed to be always present to administer justice, they exercised jurisdiction over all matters secular, as well civil as criminal, and had always to assist them a presiding judge, who was called the *capitalis justiciarius Angliæ*. As the king's chief adviser, this officer in time acquired such power that it was found necessary to curb and control it, and in the reign of king John means were taken to that end, when its powers were circumscribed and limited. The Norman earls of Chester, within their own borders, were close imitators of the crown from which they derived their power. They had their *aula comitis* and their justiciary, who exercised similar powers in the county to those of the king's justiciary elsewhere, and was a close copy of the same officer in the king's court. His office, in the time of Hugh Cyveliok, closely resembled that of the *capitalis justiciarius Angliæ*. He presided at all trials, civil and criminal, in secular matters; transacted all legal business between party and party; passed all fines; enrolled all deeds in the great Cheshire Domesday book; and witnessed all transactions

where more than ordinary solemnity was required. The Cheshire Domesday roll has perished, but among the fragments of it which have come down to us are the enrolments of two releases made before Ralph Mainwaring, justiciary of Chester, in the time of king Richard I. (Ormerod's *Miscel. Palatina*, Domesday roll, 11.)

But besides the great burden of judicial business which rested on the justiciary, he was the earl's chief adviser in the affairs of his court and county. We hardly need wonder then to find Ralph Mainwaring, who had married earl Hugh's daughter, in such favour with the earl when he afterwards rose to be justice of Chester. When the earl visited Coventry or any other of his distant possessions, the justiciary accompanied him, and both there and elsewhere was the witness to the earl's charters, and took precedence before either his constable or his steward, or any of his barons or other officers. Traditions of the greatness of Ralph Mainwaring and of his lofty alliance were fondly cherished in the Mainwaring family, where not long before the time when sir Thomas was to choose a career, they had received high sanction under the hands of those eminent antiquaries and heralds, Erdswick, Camden (*Clarencieux*), and St. George, Windsor herald; and at a still later period the learned Camden had again further sanctioned them by this printed passage in his *Britannia*:

Cum jam Danus sub Northwich, cum Wevero aquas consociaverit, in occasum recta prolabitur Wever Peverumque recipit ab ortu, qui præterfluit et nomen facit Pevero, ubi habet sedem vetusta

illa nobilis familia de Meinilwarin vulgo Manewaring e quâ Radulphus duxit filiam Hugonis Kevelioc comitis Cestriæ. — Camden's Britannia (Editio Latina), p. 462.

In 1642, when the sky was growing dark around the monarchy, the king, counting on the loyalty and good will of his subject, Philip Mainwaring, sir Thomas's father, addressed to him the following ominous and urgent letter :

C. Rex.

Trusty and well beloved we greete you well Whereas wee have occasion to speake with you about our very especiall service, our will and pleasure is that you immediately make your repayre unto us, and hereof you may not fayle as you tender our high displeasure and will answer the contrary at your uttermost perill since if you shall neglect to attend us wee cannot but conceive you to be ill affected to us and our sayd service and shall bee forced to proceede against you accordingly Given at our court at Chester the 24 Sept. [1642]

To Philip Mainwaring Esquire.*

What was the exact effect which this missive had we are not informed, but it probably did not draw Philip Mainwaring to Chester. Possibly he was hindered from going thither by that which is mightier than kings, an unavoidable sickness, for certain it is, that only one short month before, as if warned of his end by symptoms of disease, he had employed himself in setting his house in order, by settling his worldly affairs and making his will.

* From the original letter, preserved at Peover.

The tone of this will is so religious, that the following extract from it may not be unacceptable :

Aug. 2.
18 Car. 1.
1642.

In the name of God the father God the sonne and God the Holy Ghost, Amen. the 22 day of August, the 18th yeare of the raigne of our sou'aigne lord kinge Charles of England &c and in the yeare of our Lord God 1642. I Philip Mainwaringe of Peover in the countie of Chester Esq^r (being in as good health of body as usually I have beene for many yeares past and of good and perfect memory, praysed be Almighty God for both) do ordaine make and declare this my last will and testament in manner & forme followinge viz. First I bequeath my mortal soul to the blessed keepinge of my gracious God who creatinge it infused it, & infusing it created it, in all assured humility trusting that my many manifold and most grievous sins are all of them and every one of them fully pardoned & remitted to me & clearely washed away in that most pretious blood of that immaculate lamb Christ Jesus slaine from the beginninge of the world, for the sins of the whole world & in particuler for myne. And by this bitter death of his alone I hope to enjoye the sweetnes of Eternall life and blisse ; And for that fraile piece of clay, that craizie spare body of myne I wish it may be decently interred in our peculiar dormitory or buryall within the chappell of Over Peover there to rest in peace till the general resurrection : yet this at the discretion of my executors hereafter named if my dissolution shall happen farre from home. However or wheresoever I forbidd all pompe. I desire both to live and dye a meeke and humble Christian & a funeral suitable to such a one. Noe blacke at all but in my owne house. This notwithstanding, let the poore bee remembred in a fitting manner not onely at Peover but at Baddeley also if it please God I dye there, &c.

Also I give & bequeath to my sonne Thomas Mainwaring all my bookes of what sort soever : but as an heire-loome to our poore family to be kept & preserved for the use & benefite of

my said sonne Thomas & the heires males of our family for ever successively wishing there may be a constant addition of good & choice authors to it till it become a compleate library & these my imp'fect beginnings perfected and I humbly beseech God of his infinite mercie to sanctifie the excellencie of knowledge (even true saving knowledge) to him & them for ever.

In Philip Mainwaring's days it was the general custom for men to put off making their wills until the near approach of death. He, however, seems to have thought it wise not to put off so serious a matter, but to prepare for the end in time, for he lived on after making his will until the 10th December 1647. When the end he had looked for came he closed his eyes in peace, and his son, sir Thomas, entered upon his inheritance. Here again the careers of the two rivals, sir Peter and sir Thomas, touched each other. Sir Peter had just lost his father and entered upon his estate at the same time that sir Thomas entered upon his. Hitherto there had been a coincidence of events in the lives of the two men, but their paths were now to diverge for a time, but only to come together again afterwards.

In the meantime

One chose the losing, one the winning, side.

At the breaking out of the great civil war sir Thomas Mainwaring cast in his lot with the parliament party, held up his hand for the covenant (*Hudibras*, i. 76, in notis), and afterwards took the engagement oath. The house of Mainwaring, however, was a divided and not

an united house at that time. Two of them, both colonels, served under the parliament: Henry Mainwaring, who was of Kermincham, commanded the Cheshire militia, and is twice libelled in some satirical verses of the time (*Warr in Lancashire*, Chetham society, 120-157); and Robert Mainwaring, who was chosen one of the king's judges, and saved his life by declining the dangerous office. Arthur Mainwaring, another of the family, was sent by the parliament to serve in Ireland, and their distant connections, the Minshulls of Stoke, with whom the poet Milton was remotely connected, would tend to draw them still nearer to the parliament side. On the other hand, sir William Mainwaring lost his life in the service of the king in the year 1644;* while sir Thomas Mainwaring, the recorder of Reading; lady Mainwaring, his widow; Peter Mainwaring, junior, of Smallwood;

* Sir William and captain Allington were killed at the same time in the streets of Chester, and in the cathedral there is this monument to him:

To the perpetual memory of the eminently loyal Sir W^m Mainwaring knight, eldest son of Edw^d Mainwaring Esq., chancellor of the County palatine of Chester, of the ancient family of Mainwarings of Peover in the said county, who died in the service of his prince and country, in the defence of the city of Chester, wherein he merited singular honour for his fidelity, courage and conduct. He died honourably, but immaturely, in the 29th year of his age, Oct. 9, 1644. His lady erected this monument of her everlasting love and his never dying honour, Oct. 25, 1671. Lyson's *Ches.*, p. 574, in notis.)

Sir William Mainwaring is one of the few heroes honoured with a portrait in the unique window of stained glass in Farndon church, which Lyson says was put up in 1658. (*id.* p. 656; *Hist. Cheshire*, by Dr. Ormerod, vol. ii. p. 407, where a copy of the window is given.)

and Elisha Mainwaring of Martins, were compelled to pay for their loyalty by compounding for their estates (Catalogue of Sequestrations, *passim*). Another connection of the family, Elias Ashmole, the historian of the order of the Garter, who married, first, a daughter of Peter Mainwaring of Smallwood, and secondly, lady Mainwaring, the widow of the recorder of Reading, and who was also a loyalist, seems to have lived on intimate terms with the Mainwarings, and had he not lived before the Amicia controversy, we might have had his opinion upon it, which, from such a genealogist, would have been of value. When Ashmole was made a freemason at Warrington on the 16th October 1646, colonel Henry Mainwaring was initiated into the craft at the same time. (*Ashmole's Life*, by Lily, p. 15.)

Although sir Thomas Mainwaring does not seem to have ever held a military command, he once filled the highest office of the peace in the county, when Cromwell, in the year 1657, made him its high sheriff. Unlike those who preceded and followed him, however, he held the office only for a single year, probably because the death of the protector interrupted the then ordinary practice of the time, when the sheriff often served for a longer time.

In 1653 his mother erected for him the handsome and spacious range of stabling which, in solidity of structure, harmonises with the old hall built in 1586, and in which sir Thomas lived and died, at Peover. It will accommodate sixteen horses, and is fitted up in a palatial

style. The stalls are divided by well carved and well proportioned Tuscan columns, carved in solid oak, and from stall to stall, above the columns, is a well executed



architrave and cornice, handsomely enriched with carvings. No modern stables can surpass it in stateliness, dimensions and well ordered contrivance.

In that age a dove-house was thought an essential appendage to every great house, and three years later the same benefactress added such a building to her other improvements of the family mansion at Peover.

This enlargement and improvement of the family seat was possibly a resource to which the family betook themselves from the troubled state and unsettled politics of the time, which inclined the gentry to travel less and remain more at their own homes. Thus, in the end,

they were led to attend to the improvement of their estates, and so out of evil came good.

In the year 1660, when the Convention parliament was chosen, sir Thomas Mainwaring was elected to it as one of the members for the county, having for his colleague the celebrated sir George Booth, afterwards lord Delamere, which shows that sir Thomas Mainwaring's politics were now approaching the same colour as sir Peter's. The year before, when sir George Booth rose on the king's behalf, Roger Mainwaring of Kermincham, and Elisha Mainwaring of Martins, both rose with him, and were made prisoners at the battle of Winnington and sent to Chester castle. (*Hist. Cheshire*, preface, xli.) Probably prudential motives then held back sir Thomas, like many others, from openly helping to forward a cause which he nevertheless wished to succeed.

But sir Thomas Mainwaring was now in favour at court, and on the 22nd November 1660 the king created him a baronet, and he and sir Peter Leycester had once more reached the same goal.

The return of a more settled government left sir Thomas at leisure to attend to home and country pursuits. He no longer sought a return to parliamentary life, but employed himself about the improvement of his estates. In 1665 he constructed a park round the family mansion at Peover, and had it stocked with deer.

In 1670 he sustained a great loss in the death of dame Mary, his wife. She was a daughter of sir Henry Delves, and died and was buried at Peover. Had she lived a

few years longer sir Thomas might have avoided some of the bitterness which almost inevitably arose from the Amicia controversy, or might, with her sympathy, have been better able to bear it.

The tradition of their ancestor's marriage with earl Hugh Cyveliok's daughter, we have said, was fondly cherished by the family of Mainwaring; and sir Thomas, who, besides the library mentioned in his father's will, had a large collection of family charters, with both of which he was well acquainted, though in other respects he was inferior to sir Peter as an antiquary, had early employed himself upon his pedigree, and in verifying its several particulars. Until his time all the heralds who had noticed Ralph Mainwaring's great match had made Amicia a daughter of Bertred, and consequently sister of the whole blood to earl Randle Blundeville, which is shown both by the family pedigree compiled by Glover, of which the following is an extract, and by the pedigree before mentioned as having been certified by Camden.

Hugo Kevelioc Comes Cestriæ quintus = Bertradis filia Simonis Comitis Ebroicen'

Constancia = Ranulphs	= Clemencia	Matildis	Mabilla	Agnes	Hawisia	Amicia
filia et	cogno-	filia Dni	nupta	nupta	nupta	nupta
heres	mento	Radulphi	Will'mo	Will'mo	Roberti	Radulph.
Conani	Blunde-	de	de Al-	de	de	Mennil-
Comitis	ville	Fulgeriis.	biniaco	Ferrariis	Quincy	War'.
bretanniæ	Comes	Uxor	comiti	Comiti		
relicta	Cestrie	secunda	Hunting-	Arun-	Derbeie	
Gaufredi	Sextus	doniæ	delie			
filii Regis		filio				
Henrici		Henrici				
secundi		Comitis				
		Hunting-				
		doniæ				
		♂				

Before the year 1647, however, the truth slowly dawned on sir Thomas Mainwaring, and having then begun to doubt whether Amicia was actually the daughter of Bertred, he was led to correspond with other antiquaries on the subject, and amongst them, with William Vernon, Dugdale's most able coadjutor, from whom he received a letter, of which the following is an extract :

Deare and ever respected freind.

Your free expressions and readie willingnes to communicate still to me (the unworthiest of those y^t are called lovers of antiquities) these hidden secretts of the countie of Chester wich I n^rally affect and many judicious men in former ages never inquired after but tooke things upon rela^con as many discents collected witnes and were at severall visita^cons counted authenticke must needs oblige me in a strong tye of thankfullnes wich is all you can exspect from him y^t can make noe other requitall

I have heard from my kinsman Math. Mainwaring y^t he sawe the deed as also S^r Rand. Crewes opinion therof seene likewise many discents thereof testifying the same, but yet dare not positively conclude Amicia to be L^eitimate for that she had noe pte in the pticon ; onely the Meanes of y^t family comparatively wth the rest might cloude their favor towards them whereby noe share was allowed them or y^t the sought after it is dubious

I have according to your desyer drawne a draught of the families discent as well as one could that never sawe any of the evidence belonging to that family haveing anexed in the margin such notes to prove there were such men as I have met wthall, relateing where the are to be seene, but where I could not by any p^rse y^t came to my knowledg upon certaine grounds, knit the lyne together, I have soe left it, not confiding in the viewe of former discents whereof I have seene many, but leave it to be proved by those y^t are better seene into these hidden archana of

antiquitie, not troubling you wth rep^{ti}on of those proofes I sent you that Raphe Mainw: was justice of Chester, y^t he married the E. Hugh's daught^r and that Earl Rand. was unckle to Roger or that Roger gave Peever to his younger sonne William from whom this family is now descended; for supplem^t of prooffe I refer you to the small fres alphabetically sett downe in the inclosed onely lett me add for the marriage of W^m Mainw. to Leicesters daughter of Tabley after the death of Joane the coheire of Praere, y^t I conceive it to be true upon this ground, that Leicester nephew of her that married W^m Mainw. first settled his estate upon himselfe and his heires, the remaynder to John Maynw: with remaynder to Randall his brother wth other remaynd^{rs}, that after he made another feoffm^t and left Jo. Maynw. forth (who was then dead as I suppose), and settled it upon Randall. I tooke notes from the deedes but cannot for the present give you a better account thereof: to prooffe the daughters of John Mainw. I had it out of an old manuscript which was had from a younger brother of y^t family beginning from Randall y^t marr^d Margerie the relict of Buckley comonly call'd the good Honkin Mainwaring [The rest does not relate to Cheshire matters.] Your true thankefull freind

[The address of the letter is gone.] and servant

Shakerley the 2^d
of 1647.

WILL: VERNOUN.*

Sir Thomas Mainwaring, being thus well read in his family pedigree, which had been a cherished subject with him, no sooner heard of the publication of the *Historical Antiquities*, in which its author had stated his opinion that the lady Amicia was illegitimate, than he entered the lists in her defence, and, in 1673, published his first

* From the original, *pene*s sir Harry Mainwaring, at Peover.

pamphlet in the Amicia controversy, which, with the several others from his pen as well as those from sir Peter's, will all be found in the following work. It does not appear that sir Thomas, besides his share of these tracts, ever sent to the press any other work.

Sir Thomas, who had lived through the great civil war, saw also the revolution, and we may be sure which side he took in it, since his son, sir John, who had married the daughter of Roger Whitley of Peel, at whose house king William III. slept on his way to the Boyne, was then member for Cheshire.

When that aged lawyer, serjeant Maynard, came to congratulate William III. on his accession, the king, addressing the serjeant, who had lived through the great civil war, said to him: "Serjeant Maynard, you must have seen many changes of the law." The serjeant said: "Yes, and if your majesty had not come I had survived the law." Although not so old, and not a lawyer like the serjeant, sir Thomas Mainwaring, had he seen king William, might have been addressed in the same terms and might have made the same reply.

Like his rival sir Peter, sir Thomas died in a moated and mullioned house, raised at a time when men built

Less against the elements
Than their next neighbours!

He died at Peover on the 28th June 1689, having attained very nearly the same age as his relative and opponent sir Peter. Like sir Peter, he was buried in

the family chapel, but, unlike him, he is commemorated by no epitaph.

The family chapel at Peover, which is described in the *History of Cheshire*, contains many memorials to others of the family, some of which are very beautiful, but no monument or memorial exists to mark the last resting place of sir Thomas Mainwaring or his lady. Surely sir Peter's great opponent should have been, like him, commemorated!

A portrait of sir Thomas Mainwaring, engraved from a painting at Peover, forms the frontispiece to the second volume of this work. Though he never served in the field, the artist has chosen to represent him in armour, which, however, is far less incongruous than the flowing curls with which his head is decked.

Sir Thomas has not been so fortunate in his artist as sir Peter was, yet the portrait may serve to give us an idea of his character, and show the mind's complexion in the face. We look on it in vain to find the energy and vigour with which sir Thomas, to maintain the family honour, took up and conducted the defence of his ancestress. The expression is rather that of a bold, studious and intelligent gentleman, who had a handsome but somewhat feminine face, and who, of the two sides in any difference, would always be sure to take the lady's part.

Having given this sketch of the two principals in the great Chester controversy, we now pass on to examine

and summarise their arguments, and finally to state what seems to be the conclusion of the whole. A controversy which lasted five years was almost certain to become wordy. "Striving mightily" to support each his own view, both parties admitted into the dispute many things which were quite foreign to its merits, repeated the same arguments again and again, and so multiplied the issues as to increase the reader's trouble and cloud his judgment. In our review of the controversy we shall omit whatever has no direct bearing upon the issue, and may be left out without injury to either of the champions. Before entering upon it, however, it may be as well to give the titles of their several papers as they appeared, and a few general words in explanation of each.

These, then, are the titles of the several works which comprise the controversy :

1. A Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester ; wherein it is proved that sir Peter Leycester, bart., in his book entitled *Historical Antiquities* in two books : the first treating of Great Britain and Ireland ; the second containing particular remarks concerning Cheshire, hath without any just grounds declared the said Amicia to be a bastard. By sir Thomas Mainwaring of Peover in Cheshire, baronet. London, 1673. 12mo.
2. An Answer to the book of sir Thomas Mainwaring of Peover in Cheshire, baronet, entituled, *A Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester*, wherein is vindicated and proved, that the grounds declared in my former book concerning the illegitimacy, are not evinced by any solid answer or reason to the contrary. By sir Peter Leycester, baronet. A.D. 1673. 12mo.

3. A Reply to an Answer of the Defence of Amicia, daughter of Hugh Cyveliock, earl of Chester. Wherein it is proved that the reasons alledged by sir P. Leycester in his former books, and also in his said Answer concerning the illegitimacy of the said Amicia are invalid and of no weight at all. By sir T. Mainwaring of Peover in Cheshire, baronet. London, 1673. 12mo.
4. Addenda: or some things to be added to the former Answer to sir T. Mainwaring's book, to be placed immediately after page 90. Nov. 1673. 12mo.
5. An Answer to sir Peter Leycester's *Addenda, or some things to be added in his Answer to sir Thomas Mainwaring's book*, written by the said sir T. Mainwaring. London, 1673-4. 12mo.
6. Two Books: the first being styled, *A Reply to sir Tho. Mainwaring's book, intituled An Answer to sir P. Leycester's Addenda*. The other styled *Sir T. Mainwaring's Law-Cases Mistaken*. By the said sir P. Leycester. Anno Domini 1674.
7. An Advertisement to the Reader, by sir P. Leycester. 3rd March 1674.
8. An Answer to Two Books, the first being styled, *A Reply to sir Thomas Mainwaring's book intituled An Answer to sir P. Leycester's Addenda*. The other styled, *Sir Thomas Mainwaring's Law-Cases Mistaken*, written by the said sir T. M. London, 1675. 12mo.
9. A Second Reply to sir T. Mainwaring's *Answer* to my Two Books, written by sir Peter Leycester, baronet. A.D. 1675. 12mo.
10. "Peroratio ad Lectorem," by sir P. Leycester. Dated Dec. 17, 1675.
11. The Case of Amicia Truly Stated, by sir *Peter Leycester*, baronet. August the 5th, MDCLXXV. Printed in the year 1676.
12. An Admonition to the Reader of sir P. Leycester's Books, written by sir T. M. 1676. 12mo.

13. An Answer to sir T. Mainwaring's book, entituled, *An Admonition to the Reader of sir Peter Leycester's Books*. Written by the same sir P. Leycester. London, 1677. 12mo.
14. A Reply to sir Peter Leicester's Answer to *sir Thomas Mainwaring's Admonition* to the Reader of sir Peter Leicester's Books. Written by the said sir Thomas Mainwaring, but never yet printed [*i.e.* in the writer's life.]
15. The Legitimacy of Amicia, daughter of Hugh Cyveliock, earl of Chester, clearly proved, with full answers to all objections that have at any time been made against the same. By sir Thomas Mainwaring of Peover in Cheshire, baronet. London, 1679. 12mo.

The following may be considered as a general summary of the contents of these papers :

Paper No. 1 is a statement of the case against Amicia, with sir Thomas Mainwaring's temperate answer to it. In law phraseology this paper may be called the declaration.

Papers No. 2 and 4, both by sir Peter Leycester, should be read together. These, which may be called the plea, repeat the writer's first statement and add a few further arguments and illustrations. In these papers the writer, who had taken up a position, seems to have made up his mind to defend it *à l'outrance*. His temper has become warm, and he indulges in some tart expressions towards his opponent.

Papers No. 3 and 5, by sir Thomas Mainwaring, which should be read together, may be called the replication. They contain sir Thomas's Answer to his opponent, and show an intimate acquaintance, on the part of the

writer, with the early chroniclers as well as with ancient charters.

Papers No. 6 and 7 may be called sir Peter Leycester's rejoinder. In these he repeats the arguments he had used before, and writes as if growing impatient with his opponent.

In paper No. 8, sir Thomas's surrejoinder, he reinforces his old arguments by some few which are new. Here he resents sir Peter's sneers, and writes satirically.

Papers No. 9, 10 and 11 may be called the rebutter. In these sir Peter retraces his old ground, tries to strengthen his position, and repeats many of his former arguments.

In paper No. 12, which may be called sir Thomas's surrebutter, he combats sir Peter's arguments and reinforces his own.

Paper No. 13 is in the nature of a demurrer by sir Peter to his adversary's law.

Papers No. 14 and 15, which conclude the series, may be called sir Thomas Mainwaring's summing up of the whole case to await the judgment of the reader.

Sir Peter Leycester having stated in his *Historical Antiquities* his opinion that Amicia, the wife of Ralph Mainwaring, was not earl Hugh Cyveliok's lawful daughter, sir Thomas Mainwaring, her descendant, accepting it as a call to him to take up the lady's cause and to prove sir Peter mistaken, immediately published his *Defence of Amicia*, and the parties at once came to issue.

Sir Peter averred :

1. That Amicia was not the earl's daughter by his wife Bertred.
2. That it was not enough to suppose she might be his daughter by a former wife, but that it must be proved, "or from solid reason" strongly to be inferred, that the earl had a former wife, and that Amicia was his daughter by such wife.
3. That it is on record that, by his wife Bertred, the earl had a son and four daughters, who were afterwards his coheirs, and carried away all his lands.
4. That whatever is given in frank marriage is given as a portion, and that a release of the service of a knight's fee could not be a competent portion for a legitimate daughter, and she an eldest daughter (such an eldest daughter being always more worthy than the second, and the earl's four daughters by Bertred being married to four of the greatest earls in England).
5. That our ancient historians, *Polychronicon* written by the monk of Chester, Henry Knighton the monk of Leicester and others, as well as Camden and Stow, and the record of 18 Henry III., have recorded earl Hugh's lawful daughters and coheirs, and if Amicia had been legitimate it is not likely all these writers would have omitted her, or that they would have observed such an *altum silentium* respecting her.

The mother of strife, though, like mischief, no bigger than a midge's wing, may grow to a very great matter. Sir Thomas Mainwaring, who was ready with his answer, rested his ancestress's vindication on these reasons — and sir Peter found in him “a foeman worthy of his steel :”

1. That Ralph Mainwaring was no unequal or disparaging match for even a lawful daughter of the earl, who at that time was neither a coheir presumptive of either him or his son, she being only of the half-blood to her brother and sisters.
2. That Ralph Mainwaring, the husband of Amicia, was by no means an inconsiderable person, having the inheritance from his ancestors of the whole or parts of nineteen manors in Cheshire and elsewhere, and being also the judge or justice of Chester, an office of high rank and great importance.
3. That, unlike her half-sisters, who were married after their father's death, and only acquired their great fortunes after the death, without issue, of their brother Randle, Amicia was married to Ralph Mainwaring in her father's life-time.
4. That several years before, three eminent judges and four heralds, having been consulted on the case, had given it as their opinion that Amicia was legitimate, and that a chief justice of the Common-pleas, and a lord-keeper of the seals, with two other heralds who had been consulted since, had given a similar opinion.

5. That in his gift to Ralph Mainwaring *in libero maritagio* with Amicia, the earl expressly calls her his daughter (*filia mea*), while persons of the greatest local rank and quality are witnesses of the gift—R. abbot of Chester (*probably Robert, who became abbot in 1174, and who survived the earl*), Bertred (*the earl's countess*), Bertram (*de Verdun*), his chamberlain, and eleven others.
6. That afterwards, when Ralph Mainwaring made a gift to Henry de Aldithley *in liberum maritagium*, with his and Amicia's daughter Bertred, the consideration in which Ralph was held is shown by his gift being witnessed by earl Randle, Amicia's half-brother; by Hugh, earl of Ulster; by Philip de Orreby, then judge or justice of Chester; and thirteen other persons.
7. That in his gift *in frank almoign* to Deulacresse, Roger Mainwaring, Amicia's son, expressly calls the late earl Randle his uncle, "*quondam comitis Cestrice et Lincolnie avunculi mei.*"
8. That the common law never at any time allowed a gift *in libero maritagio* to be made with an illegitimate daughter, she not being *de sanguine patris*.
9. That the intimate relation in which Ralph Mainwaring stood to earl Hugh is shown by his accompanying him on all occasions when he visited his distant possessions; that he was with him at Coventry, and witnessed his charter to the burgesses

there; that he witnessed also his confirmation of Calk priory in Derbyshire and another of his deeds, besides three other deeds of earl Randle's (all which deeds are given in the *Historical Antiquities*). That Roger Mainwaring and Henry de Aldithley, his sister's husband, witnessed earl Randle's gift *in frank almoign* to Dieulacresse, and that Henry de Aldithley also witnessed a deed of Robert de Ferrars, whose mother was one of earl Randle's sisters and coheirs.

10. That to prove what was done long ago much less evidence is sufficient than to prove what was but lately done. That the earl having called Amicia *his daughter*, she must be presumed to be legitimate, and her not being his daughter by Bertred by no means proves that she was not his daughter by a former wife.
11. That if all those persons in the olden time whose fathers we cannot prove to have been married must be held to be base-born, most of the great persons who lived in the first and second centuries after the Conquest must be so accounted. Thus, to give an instance, it is very hard, nay impossible, now to tell who were the wives of Walter Gifford first earl of Buckingham, John of Henalt earl of Cambridge, and very many other personages who made a great figure in their own day.
12. That (which shows still further the high consideration in which he was held) Ralph Mainwaring,

the justice, in Alan de Boidele's grant to his brother, is named as a witness immediately after earl Randle, and before either sir Robert de Montalt, the steward, or any other of the witnesses.

13. That (which shows the same thing still more strongly) in sir Robert de Montalt, the steward's, gift *in frank almoign* to St. Werburgh's, Ralph Mainwaring is named first of the score of witnesses to it. (Of these witnesses, no fewer than four were the same who witnessed the earl's gift to him *in frank marriage* with Amicia.)
14. That though earl Randle Gernons had made the baron of Halton his constable, and expressly given him rank and precedence next after himself and before all other his barons; and though he had created the baron of Montalt his steward, and given him rank next after the constable; Ralph Mainwaring, whenever he was in the presence, was always named as a witness before either of them—a strong presumption that he owed his high standing to his having married the earl's legitimate daughter, and so being accounted a member of the palatine ruling family.
15. That the roll *de Dominabus pueris*, &c., in 30 Henry II. (1183), shows that Bertred was only twenty-four when her husband died, and so, at that time, could hardly have had any child then married or marriageable.
16. That Amicia being called by earl Hugh *his*

daughter in a solemn deed, affords a presumption of her legitimacy so strong that it can only be rebutted by direct proof to the contrary.

17. That the lordship of Henbury (which the earl of Chester held at the Conquest in his demesne) probably came to the Mainwarings upon Ralph's marriage with Amicia, no mention of it being found in connection with the Mainwarings before that time.
18. That, according to Caradocus Lancarvan, Hugh Cyveliok in his father Randle's life-time, and to aid him against the king, fortified Cymaron and won Melyeneth in the year 1142, when he could not be less than twelve years old.
19. That in a charter of Randle Blundeville's, made at a time when he was duke of Britain (a title which he took in 1187, when he married Constance the widow of Arthur, and laid down in 1200, when he divorced her), the *first* witness named is the countess Bertred; the *second*, Ralph Mainwaring, without his title of justice; and the *third*, Ralph de Montalt, the steward.
20. That shortly after his father's death, in 1153, when he must have been of age, earl Hugh Cyveliok granted Stivinghale *in frank almoign* to the bishop of Chester.
21. That in the time of king Stephen, and consequently before the year 1154, when that king died, earl Hugh gave lands *in frank almoign* to

the nuns of Bolington, and consequently must then have been of age.

22. That the *altum silentium* of the *Polychronicon*, Henry Knighton, the monk of Leicester, Stow, Camden and the rest, is no presumption against Amicia's legitimacy in the face of earl Hugh's charter, in which he expressly calls her his daughter, against which nothing should prevail except positive proof. Besides which, all the old historians except John Bromton (whom sir Peter Leycester has unaccountably overlooked) have omitted to mention Matilda, who married David earl of Dee, and who was one of the daughters of Randle Meschines.
23. That there was a great disparity of age between earl Hugh and his countess Bertred, he having been born about the year 1129 and she not until 1157, whence there arises a strong presumption that he, being so great an earl, would not have remained unmarried till Bertred was marriageable, and consequently that he had been married before.
24. That if Matilda, earl Hugh's mother, whose parents were married in 1110, was not born until 1135, she must have been born a quarter of a century after the marriage of her father and mother, which, though possible, is most improbable.
25. That another proof that earl Hugh was older than sir Peter supposed him to be, exists in the fact that he was called as a witness, and signed as

"*Hug. Com. Cestr.*," the agreement between the king and the men of Flanders as to their services, in 1163, when he must have been more than of age. (Dugdale's *Baronage*, p. 40, and Rymer's *Fœdera*, vol. i. p. 23.)

26. That before the year 1167 earl Hugh confirmed a grant to the nuns of Greenfelt.
27. That in the *Gesta Stephani Regis*, under the year 1141, earl Randle Gernons, *cum uxore et filiis*, is expressly stated to be then in Lincoln castle.
28. That Hugh Cyveliok and his brother Richard are both mentioned by Willielmus Gemeticensis under the year 1135, which is a further proof that Hugh Cyveliok was older than sir Peter supposes.

There was one question debated more than any other during the Amicia controversy, which was whether, in the time of earl Hugh Cyveliok and his cotemporary Glanvil the king's justiciary, lands could or could not be given *in frank marriage (in libero maritagio)* with an illegitimate daughter, it being admitted as undeniable on both sides that, as the law stood in and after sir Edward Coke's time, no such gift could be made. Sir Peter Leycester, who evidently found it difficult to gainsay his opponent's allegations as to the earl's age, fell back upon the point which he had raised, that the law, which in sir Edward Coke's time forbade any such gift, was not the law in the time of Glanvil, and upon this point he put this question in his address to the judges :

An non sæculo Glanvilli ex antiquâ lege nostrâ dare terram in liberum maritagium cum bastardâ filiâ suâ cuivis homini liceat, etiamsi mutata lege, donum lex hodie non permittit ?

Although the decision of this question in sir Peter's favour would not conclude Amicia to be illegitimate, yet on the other hand, a decision the other way would go far to establish her legitimacy. We need not wonder, therefore, that the question was so strenuously disputed on both sides.

For the sake of its important bearings it is, therefore, desirable to investigate the subject more closely, in order to ascertain, if possible, on which side the truth lies, and with this view, it is proposed to review, as shortly as may be, the several law authorities on the subject, in the reverse order to that adopted by sir Peter Leycester.

Sir Peter, whose opinions, through his appeal to the judges and their opinions, must have been well known, but which have found no favour with our law-writers, and have not been noticed by them, proving that the lawyers did not think there was much in them, began his consideration of the question by citing first the opinion of Glanvil, the earliest of the text writers. We propose to follow a directly contrary course, and to find the fountain by tracing upward the streams which flow from it. Blackstone, one of the latest of our law-writers, lays it down that a gift *in frank marriage* (*in libero maritagio*), which *ex vi termini* is a gift in special tail, can only be made to a daughter or cousin of the donor (*Commentaries*, vol. ii. p. 114); and the same thing is asserted, or to be inferred

from the examples given, in the law-dictionaries of Blount, Cowell and Jacob, which mention a sister among the relations. (See *sub voce* Frank Marriage.)

By another law-writer, who wrote about the year 1660, we are expressly told that "no man can give anything *in frank marriage* with any woman but such as is of his whole-blood, as sister or cousin collateral within the fourth degree, so that they may not intermarry by the law." (Hughes's *Grand Abridgement of the Law*, p. 970.)

Another writer on law, whose work appeared in 1632, thus writes on this subject :

It was more frequent in old time than it is now for men to give lands in marriage with their daughters, but now as then if a man liberally and freely, without money or other consideration save only love and natural affection, give lands to another man with a woman which is a daughter sister or cousin to the donor *in frank marriage*, which word maketh an estate of inheritance to the donees and the heirs of their two bodies, they shall hold quit of all manner of services (except pure fealty) until the fourth degree be past. (*The Laws and Resolutions of Women's Rights*.)

Sir Edward Coke, in whose time, owing to a change in our habits and manners, gifts *in frank marriage* were fast going out of use, tells us that to such gifts the words *in liberum maritagium* are so essential that no equipollent words will create them, since thereby an estate of inheritance is created, contrary to and against the general rule of law ; and that such gifts must be made either to a man with a woman or, as some hold, to a woman with a man, and that the man or the woman who is the cause of the gift

must be of the blood of the donor; and he adds a case which shows by implication that a gift *in frank marriage* by the king could only be made to a woman or a man who was of his kindred. (*Coke upon Littleton*, Hargrave and Butler's edition, 1794, p. 21^b.)

Brooke, a great lawyer who wrote in 1576, under the head of "*Frank Marriage*" gives eleven cases.

The first is a gift *in liberum maritagium* with a daughter in 45 Edward III.

The second is in the same words, and mentions the degrees. 12 Henry IV.

The third is a gift by a father with his daughter in frank marriage, and mentions the degrees.

The fourth is a gift by a father with his daughter.

The fifth and sixth are silent as to the relationship, but mention the degrees. The latter is in 15 Henry III.

The seventh gives lands with the donor's cousin.

The eighth says a gift in frank marriage before the statute of Westminster was a fee-simple conditional.

The ninth mentions a gift with the donor's cousin in frank marriage, and mentions the degrees.

The tenth mentions a marriage with a cousin of the donor.

The eleventh is an opinion on frank marriage with a remainder. (*La Graunde Abridgement*, by sir Robert Brooke, 1576.)

The next authority we reach in our upward progress is Littleton, the great lawyer whose name, according to sir

Edward Coke (and this shows the esteem in which he was held), is not that of an author only, but of the law itself.

Littleton, who was a justice of assise under Henry VI., and afterwards a judge of the common-pleas in the time of Edward IV., was the associate and companion of many famous judges and sages of the law, who assisted him in composing his *Institutes* of the laws of England. On this subject we have this great writer's opinion in these words :

Where tenements are given by one man to another with a wife (which is the daughter or cousin to the giver) in frank marriage, the which gift hath an inheritance by these words (frank marriage) annexed unto it, although it be not expressly said or rehearsed in the gift (that is to say) that the donees shall have the tenements to them and to their heirs between them two begotten. And this is called especial taile because the issue of the second wife may not inherit. (*Coke upon Littleton*, p. 21^b.)

In the thirteenth year of the reign of Edward I. (1285) there was passed the statute of Westminster *the second*, called *De Donis conditionalibus*, for regulating estates tail. This statute recognises gifts *in frank marriage* (*in liberum maritagium*) as estates in special tail, and expressly distinguishes them from other gifts to a husband and wife and the heirs of their two bodies. It shows that to a gift *in frank marriage* the words *in liberum maritagium* were essential, but in all other respects it is silent and leaves the law as it found it, whence it follows that if before the statute such a gift might have been made with a bastard, the same thing might also have been so made afterwards,

which all the authorities we have cited show that it could not be.

In the same reign, and about the same time, a learned lawyer, whose misfortune it was to be shut up in the Fleet prison, employed his constrained leisure in writing a learned law-book, which from that circumstance he called *Fleta*. This book contains a passage on frank marriage, of which this somewhat long extract is a translation :

There is a certain *frank marriage*, free from all service to be done to the donor or his heirs until the third or fourth degree, and in this manner the degrees are to be reckoned — the donatory makes the first degree — his heir the second — the heir of his heir the third — and the heir of this second heir the fourth — which last, but not any before, shall be held to do service and homage, lest the giver or his heirs, by receiving the homage, should lose his reversion. In the fourth degree, however, since then there is a vehement presumption that the land is not likely to revert through failure of heirs of the donatory, because although he then have no near heirs, or though he have, and they should fail, the land shall never revert to the donor or his heirs who have received homage, nevertheless, if *some person not of his blood* appear and establish a right to the inheritance, then the homage fails and the land shall revert. Also whenever homage shall have been done by one of the blood, thenceforth he shall also do service, for service always follows the homage. (*Fleta*, cap. 11, De Donationibus.)

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the fourth degree, and yet the land shall be holden quit till the fourth degree be passed. (Hargrave and Butler's notes to *Coke upon Littleton*, p. 23^b, and note 1, where Hale's *MSS.* are cited.) Hence it is evident that in such a gift blood was an essential ingredient.

A case in 9 Henry III. is cited by sir Edward Coke, where it is said that if the king give land to a man with a woman of his kindred *in (frank) marriage*, and the husband have no issue by his wife, he shall not hold the land at all after his wife's death, because the wife was the cause of the gift. (*Coke upon Littleton*, p. 22^a, and Fitzherbert's *Grand Abridgement*, Dower, p. 202.) But in the case of such a gift by a common person it is otherwise, for there if the husband once had issue which was heard to cry, a sign absolutely required to prove its being born alive, as the verse has it,

Nam dicunt E vel A quotquot nascuntur ab Evâ.

he was held to be entitled to hold the land as tenant for life by the courtesy of England.

In his celebrated work *De Legibus et Consuetudinibus Angliæ*, which he wrote in the reign of Henry III., Bracton tells us that *maritagium* is sometimes *frank marriage*, that is to say, free from all service, and sometimes *marriage liable to service*. It is called *frank marriage (liberum maritagium)* when the donor wills that the land thus given shall be free and acquitted of all secular service belonging to the lord of the fee, so that he to whom the gift is made shall do no service therefor

until the third heir. (*Bracton*, lib. ii. cap. 7.) In this passage there is a plain allusion to the degrees, which, as we have seen, implies a relationship by blood. And in another place the same author says land may sometimes be given before espousals and because of a marriage, by the father or other relation of the woman, to the husband with her, or to both together, that is to say, to some man and his wife (which is the same thing) and their heirs, or to some woman for her marriage. (*Id.* lib. ii. cap. 7, part 3.) Which again, by fair inference in connection with what he had before said, shows that relationship by blood was required in these marriage gifts, and, by inference, in gifts in frank marriage.

In our quest after authorities we have found all of them, thus far, in accord that to a gift *in frank marriage* the words *in liberum maritagium* or *in libero maritagio*, and some blood relationship between the donor and the man or woman who was the cause of the gift, were absolutely necessary.

Glanvil, our earliest text writer, who died in 1190, now only remains to be considered. Before him lay nothing but the common law, a great wilderness which he had to reduce, and in it there was nobody to follow. We should feel no surprise, therefore, to find he had omitted something. Let us see, however, what he says. In his first chapter on this subject he tells us that any free man having land may give a certain part of it in marriage with his daughter, or with any other woman whatsoever (*cum aliquâ quâlibet muliere*), whether he have or have

not an heir, or even if his heir dissent. (*Glanvil*, lib. vii. cap. 1.) Here, it will be observed, the author is silent as to gifts *in frank marriage*. His next allusion to the subject is more to the purpose, for in it he tells us *maritagium* is divided into *frank marriage* (*liberum maritagium*) and marriage subject to service. *Frank marriage* is when a free man gives part of his land to a man with some woman (*cum aliquâ muliere*) in marriage, so that it may be free from all service, and be kept harmless by him and his heirs against the chief lord of the fee, and in this liberty the land shall remain until the third heir, nor, in the mean time, shall the heirs be held to do homage for it. But after the third heir the land shall be subject to the accustomed service. (*Id.* lib. vii. cap. 18.)

Here, though we have no express mention of relationship, yet we have mention made of the degrees, which implies it, and we have also the marked distinction on which sir Thomas Mainwaring has remarked, between the expression, *cum aliquâ quâlibet muliere* (with any woman), which was used in treating of marriage generally, and the expression, *cum aliquâ muliere*, meaning a woman of the allowed class—a relation in blood—used in treating of frank marriage.

After this review of the law of gifts in frank marriage, taken from our law-writers, a notice of some such gifts now in the editor's possession may not be out of place, since they add to the rule of law some examples of its practice. These charters, a portion of very many such

gifts, selected from various sources and quite indiscriminately, which have come under the editor's notice, are a fair sample of this class of deeds, and of each of them we may truly say :

Ex uno disce omnes.

In introducing them to the reader's notice we shall take them as we did the law-writers, in reverse order to their dates, beginning with the latest first.

- (1.) On the 2nd October 3 Henry VI. (1424), Robert Say gave lands to Hankyn de Stoke and Margaret the donor's daughter, *in frank marriage* (*liberum maritagium*).
- (2.) Robert de Bleckleg, by a charter without date, but probably made about the reign of Edward III., gave lands to Rosamund, the daughter of Philip de Penington, *in frank marriage* (*liberum maritagium*) with Philip, the donor's son.
- (3.) In 1260 Gilbert de Sotheworthe gave lands to Hugh fitz Gilb^t de Haydock *in frank marriage* (*liberum maritagium*) with Agnes, the donor's daughter.
- (4.) About 1240 Mathew de Bolde gave lands to Gilbert fitz Hugh de Haydoc *in frank marriage* (*liberum maritagium*) with Alicia, the donor's daughter.
- (5.) About the time of Henry III. William de Calverhale gave lands in Calverhale *in frank marriage* (*liberum maritagium*) to Lawrence, his son, and Matilda, daughter of Stephen de Linyhale.

- (6.) About the same time William fitz William Bernard, by the free will and consent of his mother, gave lands *in frank marriage (in libero maritagio)* to Alexander fitz William de Peppelawe with Alina, the donor's sister.
- (7.) Yns Moriel, by an early charter, gave lands *in frank marriage (liberum maritagium)* to Madoc fitz William with Alicia, the donor's sister.
- (8.) William fitz Henry de Stapelforth, by a charter in the reign of king John, gave lands *in frank marriage (in libero maritagio)* to Wrennock fitz Wyan de Buerton with Eva, the grantor's daughter.
- (9.) About the year 1172 Roger fitz Alured gave lands *in frank marriage (in libero maritagio)* to Adam de Dutton with Agnes, the donor's daughter. This charter, almost identical in time with earl Hugh Cyveliok's celebrated gift, calling the lady the donor's daughter, using the same language, and mentioning nothing of her mother, though no doubt has ever been entertained that she was born *sine maculâ*, is very important to this argument. John baron of Halton and constable of Chester confirmed this charter; and the original charter, with the confirmation, are here printed at length, the confirmation being remarkable for the curious obliteration in it of the word *meâ*, which, by mistake, the scribe had used instead of *suâ*.

Roger fitz Alured's gift in frank marriage, about 1172.

Roger^s fili^s Alwredi omnib^s hominib^s suis et amicis Francis et Anglicis clericis et laicis presentib^s et futuris Sal'. Sciatis me dedisse et ꝥcessisse et hac presenti carta mea confirmasse Ade de Duttona in libero maritagio cu' Agnete filia mea medietatē Werbertune quæ est de meo feudo in feudo et hereditate illi et heredib^s suis ad tenēdum de me et heredib^s meis in bosco in plano in pratis in pascuis in viis in semitis in molendinis in vivariis in piscariis et in omnib^s libertatib^s et in liberis ꝥsuetudinib^s solute libere et quiete ab omī servicio et exactiōe michi et heredib^s meis pertinenti serviciū forinsecū mī et heredib^s meis^s faciendo quantū ꝑtinet ad decimā ꝑtem feudi militi^s qd ego et heredes mei debemus facere nris capitalib^s dominis et si ego vel heredes mei nō poterim^s predictā terrā predicto Ade vel heredib^s suis warantizare Ego vel heredes mei dabimus excambiū predictæ terre predicto Ade et heredib^s suis^s ad valentiā de nra hereditate ꝑꝑ^a [propria] et hāc donaciōem ꝥcessiōem et ꝥfirmaciōem feci ego Roger^s fili^s Alwredi ꝥcessiōe Will. mei filii mei hereredis [sic] His testib^s H pōr d' Nort' Johē Constab' Hug. d. Dutt. Ric Fitū Joh' fil' Alwred Will' de Carintū Robt Leon' Rob't Ven' Wrenou Puterl' Giauf rid d' Merigg's H Gamb'l' Gauf' d' Dutt. Gauf' d' Staallee Aufred fil' Lā^s Will' d' Boun Fre DD [David] Et multis aliis.

Confirmation of the above Charter.

Scia^{nt} om^{es} tā presentes qm fut'i me Joh. ꝥst' Cestr' hac presenti carta mea ꝥfirmasse Ad' de Dutton terrā qm Rogerus fili^s Aluredi illi dedit cū Agnete filia mea sua in liberū maritagiū scil'. medietatē Werberton cū omīb^s ꝑtinenciis libē et quiete sic^t predicti Rogerⁱ carta testatur. salvo servicio meo His testib^s H. pōr d' N. Rog' fil' Alured' Ricard' Fituns Hug' d' Dutt' Rob't Venatore frē D'd.*

* The charter and the confirmation are in the possession of R. E. Egerton Warburton, esq., of Arley hall.

Hugh Cyveliok, the *fons et origo* of this controversy, seems to have been very unfortunate, for while one of the contending parties would deny him a *daughter*, an old rhyming chronicler, who introduces him with a flourish of trumpets, would give him a *father* who was not his own. Hear what he says :

When great Meschenes was deceased
 his sonne Hugh Kevelocke did enioye
 his honour & the same encreased
 by valour & by industrie.
 he with his power did wales invade
 for inrodes which themselves had made
 upon his lands & conquered all
 Broom feild & greatest part of Yalle.

(*Bishop Percy's Fol. Manuscript*, by the Early English Text society, vol. i. p. 281.)

Was there anything misleading in his name to create this double maim in his lineage, both of the ascending and descending line? Be this as it may however, while it is easy to give back to him Randle Gernons his *father*, it is by no means so easy to restore to him his *daughter*, but before we conclude we shall endeavour to do this also.

Since the two knights crossed lances upon the challenge whether Amicia had a right to bear her shield without a *bar sinister*, history has thrown no new light upon her story; nor, perhaps, after the two champions had examined the old chronicles with so exhaustive a research, could any other result be reasonably looked for or expected.

Only by some unlooked-for chance, the recovery of some forgotten record or some charter *inter vivos*, could we have hoped to find Amicia's mother mentioned as the earl's wife, or even to learn her name, after so long a lapse of time and so many fruitless searches. Considering how perishable all such things are, it is not surprising that even this hope, faint as it was, has also failed us.*

In this respect, therefore, the question rests where the two combatants left it, and, direct proof being out of the question, it only remains for us to see what, if any, further presumptive evidence can be adduced to show on which side the balance of truth inclines.

In the times immediately succeeding the Conquest great men almost always married early, for which, amongst others, there was this reason, that if unmarried when his ancestor died, the heir was liable to fall into the hands of his feudal superior and be treated as his ward, a result which, when he could, the vassal always strove to prevent. At the Conquest William the Norman bestowed the county of Chester on the palatine earl, to hold as freely *by the sword* as he himself held the realm of England *by the crown*, and Hugh Cyveliok's sword, the

* The following extract may not refer to our Amicia, but it is singular that her name occurs in it in connection with Bertred and Roger :

Essex. Jordun^s fil. Avic' pet. ver^s Rogerum fil. Berte i hid tre et xxviiij acras cu. pertin. in Crikeshee sicut jus suum et hereditatem quæ ei descendere debet ex parte Amiciæ matris suæ. (*Abbreviatio Placitorum*, i. 72, *incerti temporis* l'pe Jok'is.)

symbol of this tenure, is still preserved, and may be seen by the curious in the British museum. (Preface to *Hist. Cheshire*, p. xxvii.) Whether, if Hugh Cyveliok had been under age and unmarried at his father's death, the crown would have claimed his wardship, may admit of question,* but the then prevailing practice as to wardships, even if it did not affect him personally, would almost certainly have inclined the earl his father to wish to see him married in his life-time.

In that age too all marriages (except where the Church interfered) were effected with great ease and attended with little ceremony, and at a time when there were no registers, and, except when the king's or the earl's license was required to his vassal's marriage, no record was made of them, we rather wonder than expect to find any mention made of marriages; for that was not a lettered age, and the evidence of a marriage was intrusted to the memory of those who were present at it, and who, if any

* The following extracts seem to imply that the earldom was subject to the usual consequences of tenure :

Rot. Finium, 16 Hen. III. (1232), p. 230.

Mand. est Vic' Buk. qd capiat ī manū B̄ os. tras q'. fu'nt Rann. quondā Com'. Cestr. et Linc et eas lib'et Pet^o de Rivall ad respond' inde ad sūm salvis executorib's testam'ti ip'ius com' oībs catall. et wardis q' ip'e comes habuit ī p'dcis t'ris ad execut' t. sui fac. nisi idem comes aliquā wardā hūit rōe man'iī de Twiford q' debet reman'e ī manu B̄ eo q'd p'dcm man'iū nō debet rev'ti ad hēdes ip'ius com. T. B̄ ap. Oxon xxij die Oct.

Id. p. 235.

I. Com. Cestr. et Hunt. unus hēdū R. q'ndam Com. Cestr. et Linc. debet B̄ L^{li} p' relevio suo.

Hawis de Cestr' alia hēdū ejusd. Com. debet B̄ L^{li} p' relevio suo.

W. Com. de Ferr' qui h't ī ux', t'cia hēdū p'd'ci Com. debet B̄ L^{li} p. relevio suo.

dispute arose, might be called to prove it. Our ancestors *then*, like the Turks now, seem in some things to have preferred oral evidence to written, though such evidence died with every generation.*

Among the old chroniclers there is an *altum silentium* as to Bertred, the mother of earl Hugh's heir. None of them has mentioned when, where or how she was married, and but for the two records of 31 Henry II. (1184), *de dominabus et pueris*, and 18 Henry III. (1234), *de rationabili parte*, and one or two charters which she witnessed, we had not with certainty even known her name, and might, with Ferne in his *Lacy's Nobility* and Powell in his *Welsh History*, have called her Beatrix, the daughter of Richard Lucy, chief justice of England (p. 8, *post*), instead of knowing, as we now do, that she was the daughter of a great nobleman, and he no less a personage than the count of Evereux,† and this may serve to show us how completely the old antiquaries were at a loss concerning her.

No cotemporary chronicler has attempted to give us any account of all Hugh Cyveliok's wives and children, but neither, on the other hand, has any of them either mentioned Amicia or cast a stain upon her birth, and if

* In some cases the law required the king's or the earl's consent to the marriage of his vassal or his vassal's widow, and for such license a fine was exacted, but no such license would be required for the marriage of the earl's son, his father being supreme in the county.

† He is called Simon count of Evereux in *Vincent upon Brooke*, p. 105, but no authority is quoted.

it is now impossible to *prove* the earl's marriage with her mother (the evidence having died with the witnesses), so it is alike equally impossible to disprove it.*

Bearing in mind then the tendency of that age to early marriages and the ease with which they were effected, it is not difficult to see that, either in his father's life-time or soon after, Hugh Cyveliok, while still young, might marry Amicia's mother without any record of it being preserved, and that afterwards, having lost her by death, he might take to wife Bertred, the mother of his heir. Does not the care which he took to match Amicia suitably, and to make his own marriage with Bertred the occasion of hers, show his great affection for her, and lead us to infer that she was the beloved child, perhaps the only child, of a wife whom he had lost? Does not this also supply a reason for his raising her husband to high honour, and treating him with such respect as to induce his countess to be his child's godmother and give it her own name? Will it not also account to us for Amicia's son and son-in-law, Roger Mainwaring and Henry de Aldithley, calling earl Randle uncle and being so much about his court?

At a time when spurious birth was so little accounted of as to be no disgrace, and when some great persons

* In the *Great Roll of the Pipe*, 1 Ric. I. (1189), p. 223, we have this entry, which, synchronising with the date of Ralph Mainwaring's justiceship, may very possibly refer to *Amicia*, there being at the date no daughters of the earl of Chester, except her, who were not then infants:

P. Pelliciis variis ad opus filie comitis Gloec^e et filie comitis Cestr. Lxxiiij^a iiij^d

assumed it as a personal distinction, it seems little likely that if any stain had rested on her birth, the earl, in a solemn deed, would simply have styled Amicia his daughter. When William the Conqueror, in an age of *sobriquets*, defiantly styled himself *Bastardus*, he meant it not merely as a personal distinction, but to intimate that he intended to found a kingly dynasty. His sons, William, Robert and Henry, did but imitate their father when they took their respective *sobriquets* of Rufus, Curt-hose and Beauclerc.

The before-mentioned record of 18 Henry III., in which, after the death of earl Randle Blundeville, his heirs impleaded John Scot (p. 371, *post*), distinctly shows that Hugh Cyvelioke's children (of whom Amicia was not one) were earl Randle's coheirs, though the old heralds, including Camden, had given the sanction of their authority to the notion that Amicia also was a daughter of Bertred, and this notion, so subtle is error and so far and wide does it flow, is actually repeated without contradiction in the last edition of Collins's *Peerage*. (Collins's *Peerage*, Brydges's edition, vol. iv. p. 27.)

To sir Peter Leycester belongs the credit of having discovered the above roll, and in the very pardonable pride of such a discovery, he rather too hastily came to the conclusion that, because Amicia was not a daughter of Bertred nor one of earl Hugh's heirs, she was not, and could not be, his daughter by any other wife. His words are :

In the roll there is no mention of Amicia claiming any part or any from or under her in the record, besides all antient authors of those times would not have omitted her among the rest which they have set down had she been a coheir which she must needs have been had she been legitimate (p. 8, *post*).

Meanwhile he forgot that, how lawful soever Amicia's birth might be, she was, by that well-known rule of law which then prevented the half-blood from succeeding, debarred from becoming heir, either to her father or her brother, whilst there were heirs of the whole-blood to succeed them. But as sir Peter is entitled to the credit of first discovering this record, so to sir Thomas belongs that of correcting his opponent's law, and of thus proving himself the better lawyer of the two.

Sir Peter Leycester pressed his doctrine of the *al-tum silentium* of the old historians far beyond its proper bounds, for if their silence is to be taken as proof we must abandon much that we know, not only as to who were the wives and children of many historical personages in early times, but also many circumstances concerning some of the personages we know. *Multi viri fortes ante Agamemnona*, though an old, is still not an obsolete observation, and Cheshire history would lose many a name if we could only prove its annals from the printed chroniclers.

Nigel, the noble Norman on whom Hugh Lupus first conferred the barony of Halton, a great man in his day, probably died fighting his master's battles on the Welsh border. He had disappeared, however, before

the Domesday survey; and no chronicler has either recorded his achievements, or told us whom he married, or when or where he died. We only know that he left a son, William fitz Nigel, by whom he was succeeded, and who became the second baron of Halton, and to whom the Domesday survey ascribes the long roll of manors and possessions which, doubtless, once called his father Nigel lord.

The information of the chroniclers, too, is often fragmentary and disappointing. This is the case with the charter of Randle Gernons by which he refounded Trentham priory. Its substance is given in the *Monasticon*,* but neither there nor elsewhere do we find who were the witnesses to it. Amongst these, if we had had them, we might have found the name of Hugh Cyveliok, which would have supplied an important date. John of Trentham, a frequent witness of Hugh Cyveliok's charters, was probably its first prior, but here also the *Monasticon* fails us, for it gives us no list of the priors of that house, and consequently we do not know who they were, or the dates of their accession.

These being the principal circumstances which seem capable of being adduced in favour of the lady Amicia's claim to be born in honour, it may be well, before we

* Sciatis me dedisse centum solidatas terræ meæ Staffordiesire Deo et sanctæ Mariæ et omnibus sanctis, ad restaurandum quandam abbatiam canonicorum in ecclesiâ de Trentham et eas assigno de Trenteham unde rex habuit centum solidos. (*Hist. Cheshire*, vol. i. p. 25; Dugdale's *Mon.*, vol. ii. p. 250.)

sum up the evidence, to notice some few opinions which previous writers have left us upon the case.

If her contemporaries were silent respecting Amicia, the moderns might seem to have had their example before them, for they have hardly been more communicative. Camden, whose words have been already quoted, calls her Hugh Cyveliok's daughter, and never intimates a doubt that her birth had any stain. Dugdale, who was master of the whole case, states his belief that she was earl Hugh's daughter by a wife whom he had married and lost before marrying Bertred. (*Baronage*, vol. i. p. 41.) And Anthony Wood says for himself he agreed with the judges who heard the case (it could hardly be judicially) at the assizes in 1675, and then decided that the right lay with sir Thomas Mainwaring. (Wood's *Athenæ*, vol. iii. col. 1173.) The assizes at which the case was heard must have been those held at Chester before sir Job Charlton, chief justice of Chester, and afterwards speaker of the House of commons and a judge of the common-pleas, and George Johnson, puisne justice of Chester. The case which they had to hear and decide involved as much law as history, and when they heard it they doubtless had before them sir Peter Leycester's book called *Sir Thomas Mainwaring's Law Cases Mistaken, or the ancient law misunderstood and the new law misapplied*, which was published the year before, and contained sir Peter's views at length (p. 249, *post*), and to which book was prefixed a Latin preface appealing to the judges for their opinion.

Rawlinson, in his *English Topographer*, is very short, and only says :

Upon account of some passages in the *Historical Antiquities*, an historical contest commenced between sir Peter Leycester and sir Thomas Mainwaring, which did not end until sir Peter's death. (*English Topographer*, p. 25.)

In their history of Cheshire published before Dr. Ormerod's, the Messrs. Lysons merely give a passing notice of the Amicia controversy, without expressing any opinion upon it (Lysons' *Cheshire*, p. 750); and which is still more remarkable, neither the author nor the editor of the last edition of Collins's *Peerage*, inviting as the subject was, takes any notice of the Amicia warfare, but passes it with an *altum silentium*.

Dr. Ormerod, the learned author of the *History of Cheshire*, and very justly an admirer of sir Peter Leycester, could hardly allow this subject to pass without notice, and after enumerating the several printed tracts of the two champions, he thus expresses himself :

The essential question relative to the possibility of giving lands in frank marriage with a bastard, was long argued, with great ability, on the part of sir Peter Leycester, but some of his arguments are ascertained to rest on the authority of incorrect transcripts, and it is probable that few will read the last book of his opponent without allowing the victory to sir T. M. The opinions of the greater part (if not all) the judges who were consulted were given in favour of Amicia's legitimacy, and the authorities of the College of arms have also been in her favour, under the express sanction of sir William Dugdale. (*Hist. Cheshire*, vol. i. p. 32, in notis.)

But let us see what are the facts we possess towards fixing the age of Hugh Cyveliok.

Robert earl of Gloucester and Mabel, Robert fitz Hamon's daughter, the grandfather and grandmother of Hugh Cyveliok, were married in 1109. More fortunate than most great people of that age, they had a poet to celebrate their marriage, who, after telling us in homely terms how the lady stipulated for a coronet for her lord, ends his story by giving us, in verse, this date of their marriage :

This was end leve hundred yeer in the nith yeer right
After that ure Louerd was in his moder a hight.

Selden's *Titles of Honor*, p. 647.

There was issue of this marriage two daughters and four sons. Maud, the younger of these daughters, who is supposed to have been born in 1112, became, about the year 1127, the wife of Randle Gernons earl of Chester, and Hugh Cyveliok, their first son, is supposed to have been born about the year 1129.

In 1141 we read of him as being with his father and mother in Lincoln castle, and in the same year his father, being in danger of a surprise by the king, escaped from the castle, carrying probably his son with him (pp. 537-8, *post*), for in the next year, being twelve years old (the same age at which Hotspur and many other young nobles in old time made their first essay in arms), we find that in order to create a diversion in his father's favour, he took the castle of Cymaron and won for himself Me-

lyeneth, a part of Radnorshire, situated on the Wye. (*Caradoc of Lancarvan*, Englished by Humphry Lloyd, Wynne's edition, 1697, p. 197.)

Hugh Cyveliok probably came of age in the year 1150, and then, or before, he most probably married Amicia's mother.

In the year 1153, Randle Gernons having died of poison administered by William Peverel, his son Hugh Cyveliok succeeded to the earldom of Chester.

The following year he made that charter to the nuns of Bollington which sir Thomas Mainwaring shows to have been made before the death of king Stephen, and therefore, at the latest, in or before the year 1154 (pp. 313-14 and 529, *post*). So confident was sir Peter Leicester that this charter was not made in king Stephen's time, that he threw out this challenge to his antagonist: "Let him prove this deed to have been made in that reign and I will burn my book."*

The charter which he joined his mother in making to Stivinghale for the repose of his father's soul, who had died excommunicated, was certainly made in the life-time of the constable Eustace, who died in 1157, and it was probably made a few years before (p. 532, *post*).

* The reader of that amusing book *The Pleader's Guide*, will remember that one of the advocates there threatens to burn his books if they did not confirm the law as he stated it, upon which his learned opponent recommends him to *read* them first. (*Pleader's Guide*, p. 210.) Had the lawyer who wrote this pleasant book seen sir Peter's challenge to his adversary?

In 1163, when the king made an agreement with the count of Flanders, and another agreement with the count's men, the earl of Chester witnessed and signed both as "*Hug. Com. Cestriae*." (Rymer's *Fœdera*, vol. i. p. 23.)

In 1167 Hugh Cyveliok confirmed his father's gift *in frank almoign* to the nuns of Grenfelt, and directed the charter to Robert de Chisney, bishop of Lincoln, who died in the above year (pp. 535-6, *post*).

Before the year 1171 he must have lost Amicia's mother, for in that year he took to wife Bertred, the daughter of Simon* count of Evereux. (*Hist. Cheshire*, vol. i. p. 27.) Bertred was born in 1157, and consequently was fourteen years old at the time of her marriage. (*Roll de Dominabus et Pueris*, 31 H. II.)

In the same year, 1171, the earl made his celebrated gift *in frank marriage* with his daughter Amicia to Ralph Mainwaring (pp. 449 and 450, *post*).

But earl Hugh had been educated in rebellion, and it seemed now to be part of his inheritance. He and his father had joined in rebelling against Stephen to make Henry II. king, and now he rebelled again, and tried to unmake the king he had helped to make. In the autumn of the year 1173 he crossed the sea and joined the king's undutiful sons, then in arms against their father, and, on their being defeated, he was besieged and so closely shut up in the castle of Dole in Britany, that on

* The count is called Simon in *Vincent upon Brooke*, p. 105, but no authority is cited.

the 26th August he was compelled to surrender to the king at discretion. The king, who appears to have thought the four walls of a prison his best bail for the earl's fidelity, shut him up in close confinement, and the next year, when he came to England, he carried his prisoner with him, and when he returned, a few weeks afterwards, he again took him to France. On the 8th December in the same year, the earl, still a prisoner, was one of the nobles called in to sign the king's treaty with the king of Scots at Falaise. In January 1177, and not before, the king released him, and restored to him all his possessions. (Henry's *Hist. England*, vol. v. pp. 151 to 164; and Rymer's *Fœdera*, vol. i. p. 31.) Thus it appears that the earl was absent by constraint from his dominions from August 1173 until January 1177, during all which time the palatinate was probably administered by a crown commissioner.

The various dates which have been given afford strong presumption that the earl was born in or about the year 1129, and consequently that he was more than forty years old when he married his countess Bertred, who was then only fourteen years of age; but what is still more important, they show to an absolute certainty that, when he married Bertred, his daughter Amicia was of marriageable years, and was then given in marriage to Ralph Mainwaring.

But the question still remains—*Was the lady Amicia legitimate?*

In the gift in frank marriage which the earl her father made with her to Ralph Mainwaring, he calls her *filia mea* (my daughter), with no reference to any taint or stain upon her birth, while the witnesses to the charter are the earl's highest ecclesiastical dignitary, "R." abbot of Chester (probably Robert fitz Nigel, son of the first baron of Halton, who died in 1174),* Bertred the earl's countess, and twelve other witnesses, amongst whom was the earl's chamberlain; an array which bespeaks the importance of the occasion, and the earl's opinion that in giving her to Ralph Mainwaring, descended from a fellow-soldier of Hugh Lupus, and the possessor of the whole or the greater part of seventeen Cheshire manors, besides other possessions elsewhere, he was giving his daughter to a husband of suitable rank.

The words of the earl's gift, *filia mea*, should be especially noticed. They are the very same that are used in all the other numerous gifts *in frank marriage* with a daughter from the very earliest times. They are used in the gift *in frank marriage* of Roger fitz Alured, which has been given, and which is almost contemporary with the like gift of earl Hugh with Amicia. If, with these words, we are to illegitimatisé Amicia, we must illegitimatisé all the other objects of similar gifts, for the words are the same, and rarely, if ever, is the mother of the daughter named in a gift in frank marriage. Sir Peter Leycester said it was rare to find a family not stained

* *Hist. Cheshire*, vol. i. p. 213.

with illegitimacy in some of its generations, but if his construction of the gift with Amicia be allowed, a gift in frank marriage would be itself a stain, and the families not illegitimatised would be reduced to fewer still.

In or about the year 1172, when a daughter was born to Ralph Mainwaring of his marriage with Amicia, she was carried to the font, and there she received the name of Bertred, after the countess, who was probably her god-mother.

Afterwards, probably in the year 1177, Ralph Mainwaring was made justice of Chester, an office which he continued to hold until the third or fourth year of Richard I., or even longer. While he held the office he attended the earl to Coventry (p. 33, *post*) and witnessed his charter to his burgesses there, and he also attended the earl on other occasions on his visits to his distant possessions. The former earls, in directing their charters to their officers, had addressed them either to their constable and steward, or their constable, steward and justiciary or justiciaries; but Hugh Cyveliok, who in Stephen's reign had directed his charters to his constable and steward, afterwards, in the year 1178, directed them to his justiciary, constable and steward, while his successor, Randle Blundeville, after the year 1200, directed them to his constable, steward and justiciary. But whatever the address used in the charter, even after the year 1200 (*Hist. Cheshire*, vol. i. p. 33), when he had ceased to be justice, Ralph Mainwaring is always named as a witness before the constable or the steward, though each of them had a patent

of precedence before all his other barons and officers. In Randle Blundeville's charter, too, his name as a witness comes next after the countess Bertred's. Does not all this serve to show that, independent of his judicial position, Ralph Mainwaring had a high place in the earl's court as a member of his family? (pp. 148-9, 306 and 454-5, *post*.)

Afterwards, when he had ceased to be justice of Chester, and he in his turn had to make a gift *in frank marriage* with his daughter Bertred to Henry de Aldithley,* the gift was witnessed by earl Randle Blundeville, Hugh earl of Ulster, Philip de Orreby, then justice of Chester, and thirteen others; another proof of the high regard he enjoyed with earl Randle his brother-in-law (pp. 19 and 450, *post*).

After the death of earl Randle, when Roger, Ralph Mainwaring's son, made a gift *in frank almoign* to the abbey of Deulacresse for the repose of the earl's soul, he expressly calls the late earl his uncle (pp. 20, 21 and 450, *post*).

The presumption arising from all these charters that Amicia was born in honour is strong. But combined with what has already been proved, that a gift *in frank marriage* could not at that time be made with any but a daughter born in wedlock, this presumption becomes irresistible, and the reader will be readily inclined to

* An authentic pedigree of the Audleys states that this Henry was the builder of Heley castle, and that in 24 Henry III. (1240) he founded Hilton abbey, and that his wife Bertred was buried there.

concur in opinion with the judges who heard the case, and decided that the right lay on the side of sir Thomas Mainwaring, Amicia's defender.

In the address prefixed to his last tract, written, but not published, before his opponent's death, sir Thomas Mainwaring, in order to justify himself in having the last word, after quoting sir Peter Leycester's language, who had said "*he had done if I had done*," goes on to say :

I looked upon this to be as much as if he had said he would never have done so long as I did write, upon which I was put to a stand and did not well know what to do, for as I considered, on the one hand, that I had the honour to be the lady Amicia's heir male, and that not only most of the great families in England, but also, *absit verbo invidia*, our most gracious sovereign,* but many other great kings and queens, did come out of her loins, and that therefore I was bound in duty to use my endeavours to clear her herein ; so, on the other hand, I concluded that if I did continue writing I should perpetuate the controversy, which I was wholly unwilling to do, and I did therefore resolve, as far as in me did lie, that nothing more of mine should be published in the life-time of sir Peter, whethersoever he did outlive me or not.

Among his reasons for continuing the defence of his ancestress, sir Thomas Mainwaring having thus stated, not as mere matter of opinion or conjecture but as a positive fact, that king Charles II., the sovereign then on the throne, was one of her descendants, the reader

* Charles II., who was then on the throne.

will wish to see how, and by what link, the majesty of England and the house of Mainwaring became connected in their pedigrees. It was well known that the royal family of Scotland, and through them king Charles II., were descended from the marriage of David earl of Huntingdon with Matilda, Amicia's sister of the half-blood, but the way in which the same monarch was descended from Amicia, which has never before been explained, we shall now endeavour to show by extracts taken from the pedigrees of the noble families of Audley and Nevile.

The former of these extracts, taken from the Audley pedigree, which brings down the family to their marriage with Nevile, is taken from an original and very beautiful pedigree on vellum, enriched and emblazoned at every step with the arms. It has been drawn up by some herald for George Tuchet, baron Audley de Heley, "*qui nunc est 1597,*" which serves to fix its exact date.

The following is the title of this pedigree :

Stemmata et Propagationes antiquæ familiæ Tuchetorum de Whitley Tuchet in comitatu Palatino Cestriæ ex qua incliti heroes Gulielmus dominus Tuchet baro nobilis regnante Edwardo rege Angliæ post Normanicum conquestum primo ac etiam Georgius Tuchet miles hodiernus baro de Audeley de Heley totius generis splendor et decus continuata masculorum successione recte derivantur Quibus ad latera aliorum quoq' magnatum adjunguntur stemmata quorum arma sive insignia gentilitia simul cum prædiorum portionibus fœminarum hæredum jure in hanc familiam transmigrarunt Tuchetorum cognomen in chartis veterioribus Tuchet Tuschet et Thucet, Tochet Touchet et Touschet diversimode [*sic*] scribi reperitur.

The following is the extract from it :

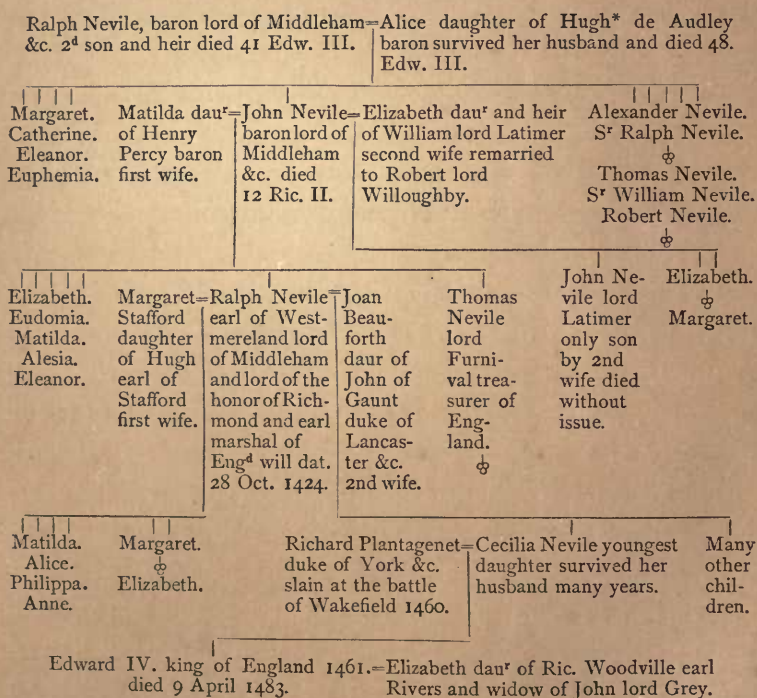
Henricus de Audeley dns et baro de Bertrea filia Maynwarding sponsa Audeley construxit Castrū de Heley. Et A° 24. H. 3. fundavit abbām de Hilton.		Henrici baroni de Audeley in abbatia de Hilton sepulta.	
Jacobus de Audeley dns baro de Audeley, obiit anno 53, regis Henrici. 3.	&=Ela filia Gulielmi de Longespe comitis Sarisburiae nupta Jacobo baroni de Audeley.		Nicolaus de Audely, clericus filius junior.
Hugo de Audeley miles fil Jacobi dñi de Audeley obiit sine prole.	Henricus de Audeley qui A° 4 Regis Edwardi I obiit sine prole.	Gulielmus de Audeley qui anno XI° Regis Edw. I obiit sine prole.	Jacobus de Audeley obiit sine prole anno primo Regis Ed. primi.
			Nicolaus de Audeley dns Heley obiit A° 27 Ed. primi.
			=Katerina soror et una heredum Johis Giffard baronis dñi de Brimesfield.
Alicia de Audeley nupta Radulpho dño Nevil de Raby.	Hugode Audeley Junior baro 12. Ed. 2. postea jure uxoris comes Glouc. factus A° 11 Ed. 3.	=Isabella soror et una heredū Gilberti de Clare com' Glouc' et Heref. vidua Patri de Gavaston.	
			Nicolaus de Audeley baro dñs Audeley de Heley A° 10 Ed. 2. superstes.*

In this pedigree Thomas Brooke esq. of Norton is put down as having married Anna, the sister of George lord Audley, and the pedigree, which seems to have been his property, has descended with the estate, and is now the property of the present possessor of Norton, sir Richard Brooke bart. With this pedigree, made just before his own time, so ardent a genealogist as sir Thomas Mainwaring, who shared the politics of the head of the house of Norton in his day, could not but be well acquainted. This pedigree, as we have seen, brings down the line of the Audleys by direct descent from the lady Amicia to Alicia de Audley, who married Ralph de Nevile.

* From the original pedigree in the possession of sir Richard Brooke of Norton, baronet.

The Nevile pedigree, from which we take our next extract, and which has appeared in print, is called: "The descent of the lords of Middleham, from the time of king William I. to king Richard III." This pedigree is certified to be extracted from the books and records of the College of arms, London.

The following is the extract from it :



(Pedigree of the Lords of Middleham. — Whitaker's *Hist. of Richmondshire*, vol. i. p. 330.)

* The Audley pedigree, which is probably more correct, calls her the daughter of Nicholas. The Nevile pedigree, as printed here, has been contracted in the collateral lines to gain space.

Joined with the Audley pedigree, the above extract shows without dispute that through the marriage of Ralph de Nevile with Alicia de Audley, king Edward IV. was lineally descended from Amicia, and the descent of our kings from Edward IV., being matter of public history, needs not be shown here.

The pedigree of so great a family as the Neviles, even though it were hid in his time in the archives of the College of arms, could hardly be unknown to so great an antiquary as sir Thomas Mainwaring, who was well known to, and on intimate terms with, sir William Dugdale and the other great heralds of his day, and we may therefore conclude that he was acquainted with its contents, when he asserted, as he did, that Charles II. was lineally descended from Amicia.*

When the two cousins, both lineally descended from the lady Amicia, shook hands before they entered the lists to begin one of the most curious genealogical contests on record, in which sir Peter was to maintain his discovery and sir Thomas his family tradition, they both believed that they were about to contend for the truth. Nothing, said sir Peter, can be both true and false *simul*

* In November 1869 a correspondence took place in *Notes and Queries*, in which a correspondent signing herself "Hermetrude" suggested that a marriage between Audley and Nevile was the probable link which allied the Mainwarings with royalty. The editor had previously suggested eight sources of the alliance, the first of which was Audley and the last Elizabeth of York.

et semel, and therefore, in any argument, strength of reason and good authority must guide us to one side or the other. *Amicus Plato, amicus Socrates, sed magis amica veritas*, yet in contending for truth we may still be *pii adversarii*. His opponent, on his part, declared that as he entered upon the controversy with regret, so he hoped it would not be taken ill if he endeavoured to make it appear that some of sir Peter's charges went upon no absolute certainty, for he believed that it was not of any malice that he was led to cast a slur upon their ancestress, but only a desire to make known his supposed discovery. Thus, although sir Peter was ready to do battle for his discovery and sir Thomas for a lady's fame, each believed that truth, a still fairer lady, was the object of them both.

The real question whether the lady was or was not born in wedlock lay in very narrow compass. All the old chroniclers and historians being silent upon it, the fact was only to be established by such collateral circumstances as were to be found elsewhere, and by the presumption necessarily arising from them. But this issue, so simple at first, and so capable of being compressed into a small space, expanded as the controversy proceeded, and gave birth to other issues, which drew the combatants aside, and, at times, almost obscured the real point in dispute.

One of the collateral issues raised was whether Geva, a daughter of Hugh Lupus and ancestress of the Bassets, was not *base* born. To prove that she was not born of

Ermentrude, who, he said, was the only wife of Hugh Lupus, and the mother of Richard, his only son, sir Peter, respecting this son, quoted the words of Ordericus, "*quem solum ex Ermentrude genuit;*" upon which, after remarking that there was no necessity to take the word *solum* adverbially, and that, although sir Peter had so marked it, it was not marked so by Ordericus, sir Thomas contended that it might mean, not that Richard was Hugh's only child, but merely his only son. Some ink was spent upon this part of the question which the grammarians, who would be of a contrary opinion to sir Thomas, would now think was uselessly spent. But that there should have been this early suspicion of a tainted birth in the Bassets is remarkable, since, even in modern times, a charge of the same kind has been made against an early member of that family. Early in this century it was alleged that Isabel, daughter and heiress of Ralph, son and heir of Ralph last lord Basset of Drayton, who died in 36 Edward III., was illegitimate; but an able genealogist undertook to disprove the charge, and he entirely refuted it by the record taken in the time of Richard II., after the death of the last lord Basset. (Collins's *Peerage*, Brydges's edition, 1812, vol. iv. p. 9, in notis.)

Another question incidentally raised, and argued at great length, was whether Joan, the wife of Llewellyn prince of Wales, was the lawful daughter of king John. Misled by the old chroniclers, sir Peter Leycester at first

supposed that she was the same person who afterwards married Robert de Audley, but his antagonist having produced a record to the contrary, he acknowledged his error and gave it up. He still, however, maintained, notwithstanding she had a gift *in frank marriage* from her father when she married Llewellyn in 1204, that she was the king's daughter born of a daughter of the house of Ferrars. Afterwards he proceeded to say, in the words of Mathew Paris, that in 1230 "Willielmus de Braus vir nobilis et potens, a Leolino principe Walliæ patibulo suspensus est mense Aprilis cum uxore suâ (scilicet Leolini) ut dicebatur in adulterio deprehensus" (*Mat. Paris*, p. 365); all which sir Thomas Mainwaring answered by showing that Joan could not be the daughter of a daughter of the house of Ferrars, but was almost certainly the lawful daughter of king John by his second wife, Hawise, daughter of William earl of Gloucester, whom he married in 1176, and from whom he was afterwards divorced.

The story of her infidelity with William de Braus, after having lived with her husband twenty-six years, seems very strange, and is hardly to be reconciled with the great honour the prince her husband paid to her remains after her death in 1237, when he buried her on the sea-shore of Anglesey and built a house of bare-foot friars over her grave.* In this skirmish the advantage lay with sir Thomas Mainwaring.

* At Aber, near Bangor, there is a high and steep mound, where it

To prove a date which was material sir Thomas Mainwaring produced a roll from the *Monasticon*, in which "William" archbishop of York and "R." bishop of Chester were named as contemporaries, and he showed from the coincidence of these names that a charter named in the roll must have been confirmed by Randle Gernons, and not by Randle Blundeville. Sir Peter Leycester at first contended that the names "Will." and "R." were both misprinted in the roll, and that there was no archbishop of York named William and bishop of Chester named "R." living at the same date, either in the time of Randle Gernons or Randle Blundeville. Afterwards however, being obliged to modify this opinion, he admitted there *was* then an archbishop of York named William* contemporary with Roger de Clinton bishop of

is said William Braus was hanged, and an old tradition has handed down these lines as the prince's question to his wife and her reply :

Q. Lovely princess, said Llewellyn,
What will you give to see your Willyn ?

A. Wales and England and Llewellyn,
All these I'll give to see my Willyn ;

upon receiving which answer the prince, it is said, led her to the mound, and there showed her the body of William Braus hanging on the fatal tree. These old stories are full of difficulties, and are not easily reconciled with history. Possibly William Braus's life was forfeited for some other offence, and not for defiling the prince's bed.

* Archbishop William was William Fitzherbert, afterwards canonized as St. William of York. He was elected in 1143, and remained archbishop *de facto* until 1147, when he was deposed until 1153, at which time he received the pall. He was contemporary with Roger de Clinton

Chester, but that the archbishop had not at that time received the pall. In this skirmish also sir Thomas Mainwaring showed himself the better fencer, by proving that William and Roger were contemporaries, and that William was *de facto* archbishop of York.

Each of the combatants was well-read in old charters and manuscripts, and showed great learning and an intimate acquaintance with the old text-writers, chroniclers and historians. Their language was terse and to the point, and their reasoning good; but their fault was that they repeated the same thing often. They fought earnestly, and they fought so long, that the amenities which at first distinguished their passage of arms, vanished as the contest lengthened. Some irritating expressions fell from one or the other, and the bright armour of each was smirched with wounds inflicted by his own weapons upon himself.

We have before remarked that no contemporary correspondence has been found to throw light on this controversy. The combatants were too much in earnest to jest on the subject, and consequently there is hardly a joke to be found throughout the whole controversy. One humorist of the time made merry with the dispute in verse, and, as ballads live long and satirical ballads

at least from 1143 to 1147. The life of the sainted archbishop has been written with great care by canon Raine in his *Lives of the Archbishops of York*, vol. i. p. 220.

still longer, a copy of his production has come down to us, and will be found below.*

* *A new Ballad, made of a high and mighty Controversy between two Cheshire Knights, 1673.*

(From the *Ashmolean MSS.*, No. 860, iii. art. 1, and No. 836, art. 183.)

Two famous wights, both Cheshire Knights,
 Thomas yclep'd and Petre,
 A quarrel had, which was too bad,
 As bad as is my meetre.

Neere kinsmen were they, yet had a great fray,
 Concerning things done *quondam*;
 I think as long since as Will Rufus was Prince,
 E'en about their Great-great-grandame.

Sir Peter (good man) this quarell began;
 Whilst he tumbles ore ancient deedes,
 Old women can't have quiet rest in their grave,
 So loud he proclaimes what he reads.

When in reading he found (as he thought) good ground
 To judge his Grannam a bastard;
 Though he blemisht her name, yet it to proclaime
 He resolv'd hee'd be no dastard.

But boldly durst say, that AMICIA,
 Daughter of Hugh Earle of Chester,
 For certaine was born to him by some whore
 As sure as his name was Leycester.

To this good intent he vs'd much argument,
 The which all such as are willing
 Fully to know, let them quickly bestow
 Upon his Booke sixteene shilling.

His Grannam's his friend; yet truth hee'l defend,
 And little dirt he throws on her,
 For as now, so then, among your great men,
 A bastard is small dishonor.

Another grandchild, hearing this was stark wild,
 The affront he could not disgest,
 But takes pen in hand, the same to withstand,
 As scorning to fowl his owne nest.

Sir Peter Leycester, who, by the praises of Dugdale and other antiquaries, had been placed upon a high pedestal, hardly expected to find in one who had as yet no name in the roll of antiquaries, an adversary so well

His Grannam hee'l right, against th' erring Knight,
That slander'd her without warrant:
Who does not his best, to free Ladies opprest,
Is not a true Knight errant.

Hist'ry and lawes he cites for his cause,
With Judges and Heralds, what more?
With these hee'l defy the scandalous ly,
That made him the son of a whore.

They vs'd not their swords, but their pens and foul words,
Which noyse, with other folks laughter,
Could not chuse but awake (to cleere the mistake)
The jolly old Earl and his daughter.

Then vp starts Earle Hugh, and sayes "Is it true —
That I, braue Chester's Earle,
Am summon'd to appeare before Justices here,
As charg'd with a by-blow girle?"

Not another word, but clapt hand on his sword;
While she (gentle AMICIA)
For feare of some slaughter that might come after,
Besought him in patience to stay.

But she told her Grandson, "'Twas vncivilly done
Such a hideous pudder to keep:
Whilst he dreames that folks soules do snort in dark holes
To awake vs out of our sleepe.

"Should it haue been true, that's suspected by you,
Its father was able to nourish
The barne he had got, and sure I should not
Have been any charge to the Parish.

"But you, dear Sir Thomas (much honor be your *domus*),
That my cause so well have defended,
Henceforth leaue AMICIA, both keepe *Amicitia*;
And so let the quarell be ended."

furnished and so well able to use his arms as sir Thomas Mainwaring. His firmness almost verged on obstinacy, and opposition to his discovery, of which he was full, seemed to inflame his desire for victory. Sir Thomas Mainwaring having used some expression against which sir Peter's temper was not armour-proof, he charged his adversary in his next paper with impertinence, or being impertinent, no less than thirty-nine times (unless, as sir Thomas says, his friend who had counted them had miscounted the number). Does not this recall to us the accusation as to mistakes which Scioppius made against Scaliger?

Sir Thomas Mainwaring having quoted from the Latin grammar a part of the rule as to the gender of nouns ending in *a*, "*mascula nomina in (a) dicuntur multa virorum*," to show that some nouns ending in *a*, denoting the offices of men, were masculine, sir Peter, in his reply, sarcastically reminded him he had left out these words of the rule, which he might very well have put in, "*scriba, assecla, scurra et rabula*." Sir Thomas, though he could not but feel this severe inuendo, took no notice of it, but passed it by with that *altum silentium* which has been already so often mentioned and regretted, but which, in this instance, was a feature to be commended.

Sir Thomas, on the other hand, referring to a passage in the preface to one of his opponent's papers, in which he had told the learned judges that for himself he preferred divinity before all other studies, remarked that it seemed strange, if he were so conversant in that science,

that he had not better "learned his duty to his deceased grandmother, since we are bound to honour all our parents, whether mediate or immediate, and whether they be living or dead;" and he added his opinion that sir Peter would not find a precedent in Scripture where any one did divulge the shame of any person out of whose loins he did descend except that of wicked *Ham*, which pattern, he said, was in some respects exceeded by sir Peter. To this taunt sir Peter meekly replied (p. 353) that he had done nothing like that sin of *Ham*, and that sir Thomas, in referring to it, was *Kim-Kam** from the point; and he reminded him that he was forgetting his own duty as to revilings (I *Cor.* vi. 10), and not following the pattern of Michael the archangel, who durst not take up a railing accusation against the worst of antagonists (*Jude* 9).

A lately deceased writer (Dr. Turnbull, in the preface to his print of one of the *Amicia* tracts) says the *Amicia* controversy was a conflict of family pride. To clear an ancestor from a stain may be an allowable pride; but if it was meant that family pride was the sole motive of the *Amicia* controversy, we may join issue with him. One of the two champions, sir Peter Leycester, while doing his utmost to depreciate the glory of his ancestral house, could hardly be influenced by any feeling of pride; and, notwithstanding his family leanings, we may give his

* The French *cancan* or *quanquan*, idle talk.

opponent credit for entertaining a sincere desire after truth. A fact once established, he well knew, may lead to the discovery of many other links in the chain of truth. In his day too, a time when old saws were more regarded than now, it was a common Cheshire saying that "bastard slips shall not thrive;" and sir Thomas Mainwaring, remembering this, might think his family tree, ancient, widespread and flourishing as it was, might be taken as some evidence that Amicia was born in honour.

Neither of the champions was either a professed lawyer or a practical writer, but simply a country gentleman; and that so long and animated a controversy should have been carried on by two such men is not the least remarkable circumstance in the Amicia case.

Making allowance for a few outbreaks, the conflict was carried on most creditably on both sides. Sir Peter Leycester, as might be expected, defended his opinions honestly and strenuously; and sir Thomas Mainwaring did not bate one jot of heart or hope, but stood up for his side, so long as the controversy lasted.

His last tract, which closes the series, and in which he reviews the whole subject temperately and soberly, and without passion or prejudice, will remind the reader of a judge's summing up after the hearing of a long and intricate case. It seems as if the departure of his antagonist had made him determine to forget any ill feeling which his knightly antagonist's passes had caused him.

Upon the whole, he is fully entitled, as Amicia's gallant defender, to wear the armour in which the artist of his portrait has clothed him.

It now only remains for the editor to make his and the Society's grateful acknowledgments to those who have assisted him in his work.

TO Miss HENRIETTA ELIZABETH MAINWARING, to whose pencil we owe the drawings of the stable at Peover, which form two of our illustrations, and one of which is the frontispiece of our third volume, many thanks are due, not only for the drawings themselves, but also for her ready compliance with the editor's request to make them.

TO the right honourable lord DE TABLEY, owner of the portrait of sir Peter Leycester, and to sir HARRY MAINWARING, baronet, owner of the portrait of sir Thomas Mainwaring, who obligingly lent those portraits and allowed them to remain with the engraver sufficiently long to be engraved, the Society is especially indebted. To the latter the Society is under the great additional obligation of the loan of the unique series of tracts here reprinted.

TO sir RICHARD BROOKE, baronet, for the loan of the original Audley pedigree, from which an extract has been given in the work; and to R. E. EGERTON WARBURTON, esquire, for his loan of Roger fitz Alured's gift in frank marriage and its confirmation by the constable, both which have been printed in the work, the Society owes its best thanks.

TO WILLIAM CUNLIFFE BROOKS, esquire, M.P., who has contributed the engraved portrait of sir Thomas Mainwaring, and to RICHARD HENRY WOOD, esquire, F.S.A., the Society's esteemed secretary, who has contributed that of sir Peter Leycester, which form the very attractive frontispieces to the first two volumes, the Society owes a great debt for their liberality, which calls also for an especial acknowledgment from the editor whose work they illustrate.

TO WILLIAM LANGTON, esquire, the Society's valued treasurer, the editor's thanks are due for the care and taste he has exercised in superintending the engraving of the illustrations of this work.

TO THOMAS JONES, esquire, B.A., of Chetham's library, and to JAMES CROSSLEY, esquire, F.S.A., the Society's valued president, the editor tenders his warm thanks for verifying many references in the work; and to the president his further thanks are due for many valuable suggestions, of which he has availed himself in the work, some of which his readers will doubtless recognise as coming from his accomplished pen.

W. B.

APRIL, 1870.



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A
DEFENCE
O F
AMICIA,
Daughter of

CORRIGENDA.

Page xxv, line 3, *after Latina insert folio, 1607.*

Page 138, line 13, for *Theſaurariis* read *Theſaurarius*.

*The ſecond containing Particular Remarks
concerning* **Cheshire.**

Hath without any juſt **Grounds** declared
the ſaid **Amicia** to be a Baſtard.

By Sir **Thomas Mainwaring** of **Peover**
in **Cheshire**, Baronet.

London, Printed for **Sam. Lowndes** over againſt *Exeter*
Houſe in the Strand. 1673.

A
DEFENCE
OF
AMICIA,
Daughter of
HUGH CYVELIOK,
Earl of *CHESTER*.

Wherein it is proved,
That Sir *Peter Leicester*, Baronet,
In his Book, Entituled,
Historical Antiquities,
In Two Books;

*The first Treating in General of Great Bri-
tain and Ireland.*

*The second containing Particular Remarks
concerning *Cheshire*.*

Hath without any just *Grounds* declared
the said *Amicia* to be a Bastard.

By Sir *Thomas Mainwaring* of *Peover*
in *Cheshire*, Baronet.

London, Printed for *Sam. Lowndes* over against *Exeter*
Houfe in the *Strand*. 1673.



¹T O

[A 2, recto.]

Sir *Peter Leicester*, Baronet.



T will appear very strange to those who know the nearness of Blood that is betwixt us, that I should appear in Print against you; and I do confess, it is not without some regret, that I am constrained so to do: If you would have been contented to have delivered what you did conceit, concerning *Amicia*, the Daughter of *Hugh Cyveliok*, Earl of ²*Chester*, as an uncertainty onely (as you have done that of *Roger*, Son of the said Earl *Hugh*) you know I would have rested satisfied with the Judgment of those many knowing and unconcerned Persons that have dissented from you therein, and would never have given you and the Reader the trouble of any one of these Lines. But since you were so fond of divulging this your supposed new Discovery (notwithstanding your being descended of her) as to determine her in your late published Book, absolutely to be a Bastard; and did also many years since, without any other occasion at all, send a Paper tending to the same purpose, to a then Deputy Herald (though at that time you did wholly mistake the state of the Case) I hope it

[A 2, verso.]

[A 3, recto.] will not be ³taken ill if I endeavour to give her a publick Vindication.

I might here take occasion to tell you, that I very much wonder, when you mention *Ralph Mainwaring*, Cheif Justice of *Chester*, and his Son *Roger*, and *William Mainwaring* Younger Son of the said *Roger*, (which *William* had *Over* or *Higher Peover* by gift of his said Father) that you do not take notice that they were all three Knights, you having seen proof thereof by many Deeds, where the word *Dominus* is prefixed to each of their names, which was not (that I know of) used to be done to any in those elder Ages, but those that were Knights (Clergy Men onely excepted) and accordingly in the 300 and 332 Pages of your Book, you own Sir *Thomas Mainwaring* of ⁴*Warmincham*, to be a Knight upon the like Proofs; as also, why you have not in the descent of the *Mainwarings* of *Peover*, fet down *Ranulfus* that is mentioned in *Domesday* Book (whom you truly suppose to be a *Mainwaring*) as also all the other *Mainwarings* that were before the aforefaid Sir *William Mainwaring*, in regard they held *Over Peover*, or the most part thereof, as well as they held *Warmincham*. For, that *Tadetune* which *Ranulfus* in *Domesday* Book is said to hold in *Mildestvic* Hundred is *Warmincham*, it appearing by Ancient Records that *Manerium de Tetton & Manerium de Warmincham est unum & idem Manerium*; and it is also clear, that *Ranulfus* was a *Mainwaring*, because, though he be there named without a Sirname, as *Odard* or *Hu⁵dard* (the owner of a part of *Dutton*) and many others were, yet the Sirname of *Mefnilwaren* or *Mainwaring* (for that name in Records and Deeds is written

[A 4, recto.]

very many ways) was as appears in your Book Pag. 111. used in the days of King *William Rufus* (as it also was ever since) and all the Lands that the said *Ranulfus* had in *Cheshire* which are mentioned in your Book, Pag. 422, 423, 426, 427. As also all the Lands that *Ranulfus* held in *Norfolk* were enjoyed by the Family of the *Mainwarings*.

I might also here take notice of your mistake in the 336 Page of your Book, where you blame the Herald for making, in Queen *Elizabeths* time, for the then Sir *Randle Mainwarings* Coat Barry of Twelve pieces *Argent and Gules* (for ^ewhich you cite *Guillims* Heraldry) but [A 4, verso.] that was the mistake of *Guillim*, and not of the Herald, as appears by the Pedegree then made, which you have often seen. For, the Coat which the Herald did then allow the said Sir *Randle* to have a Right unto (as well as to those two placed in your Book, P. 331. and 333. the first whereof, though cut right, is by you blazoned amiss) was *Argent six Barulets Gules*, which Coat you take notice Sir *Roger Mainwaring* did Seal with; and the direct Line of the said Sir *Roger Mainwaring* presently failing (Sir *Thomas Mainwaring* Eldest Son of the said Sir *Roger*, having issue Sir *Warine Mainwaring*, who had issue a Daughter and Heir) I know no reason but the *Mainwarings* of *Peover*, who (as is confessed by you Pag. 333.) are now next Heir-Male to the *Mainwarings* of [A 5, recto.] *Warmincham*, have a good right to the *Six Barulets* with which Sir *Roger Mainwaring* of *Warmincham*, Father of Sir *William Mainwaring* of *Peover* did Seal, as well as they have to the *Two Bars*, which Sir *Thomas Mainwa-*

ring of Warmincham, Brother of the said Sir *William Mainwaring* did bear.

I might in like manner here, let you know that I do suspect you have branded several Persons in your Book with *Bastardy*, without direct Proof thereof. And although I shall not concern my self for any, but some of those which are by you mentioned, when you write of the base issue of *Hugh Cyveliok*; yet if I make it appear that you have there without any ^scertainty asperfed two other Ladies besides *Amicia*, I hope you will have no just cause to blame,

SIR,

Your most affectionate

KINSMAN

Baddeley, Feb. 27.

167 $\frac{2}{3}$

and Servant

Thomas Mainwaring.



¹The Words of Sir *Peter Leicester*, concerning *Amicia*, Daughter of *Hugh Cyveliok*, Earl of *Chester*, in his *Historical Antiquities*.

[Page 1.]

*Part 2. Chap. 5. Pag. 134, 135, 136,
137, and 138.*

IV. *The Base Issue of Hugh Cyveliok.*



Aganus, Dominus de Milton, *whom I have seen
witness to a Deed, subscribed thus* ———

Filius Bastardus Hugonis Comitis Cestriæ.

Roger, *witness to a Deed of his Brother Randles,
to the Abbey of S. Werburge, whom I conceive
was a Bastard.*

²*Amicia, the Wife of Ralph Mainwaring sometime Judge of
Chester, to whom Hugh Cyveliok, Earl of Chester, her Father,
gave In libero maritagio servitium Gilib. filii Rogeri, scilicet ser-
vitium trium Militum: Faciendo sibi servitium duorum Militum,
as the words of the Original Deed do run now in the possession of
Sir Thomas Mainwaring of Over Peover Baronet.*

[Page 2.]

*Also, another Base Daughter, as I conceive, Married one Bacun,
and had Issue Richard Bacun, Founder of the Priory of Roucester
in Staffordshire, about the Reign of King John; for the safety of
his Soul, and the Soul of his Uncle Randle, Earl of Chester.
Monast. Part 2. pag. 267.*

*And here I cannot but mislike the boldness and ignorance of that
Herald, who gave to Mainwaring of Peover, the Quartering of the*

[Page 3.]

Earl of Chester's Coat of Arms. Which device was never done before the Reign of Queen Elizabeth, in the time of Sir Randle Mainwaring, late of Peover, the Elder, my Grandfather by the Mother; for if he ought of right to Quarter that Coat, then must he be descended from a Coheir to the Earl of Chester, but that³ he was not; for, the Coheirs of Earl Hugh, as you see before, were married to Four of the greatest Peers of the Kingdom, the Earl of Huntington, the Earl of Arundel, the Earl of Derby, and the Earl of Wincheſter's Son and Heir, who lived not to be Earl: Neither was Mainwaring then an equal Competitor to have Married a Coheir to the Earl of Chester; and it is plain, Ex. Placitis, 18 Hen. 3. Rot. 14. in the Tower of London, where the Coheirs implead John the Scot, Earl of Chester, for their part; there is no mention of Amice claiming any part, or any from or under her in the Record: Besides, all Antient Authors of those times, as Polychronicon, Matthew Paris, Knighton, Stow, and others, would not have omitted her amongst the rest which they have set down, had she been a Coheir, which also she must needs have been, had she been Legitimate; for Hugh Cyveliok never had any other Wife but Bertred, and she survived him.

[Page 4.]

And though Amice, in the Deed before mentioned, is stiled Filia Hugonis Comititis, without the Addition or Note of Bastard; it was very usual in those elder ages so to do: The like we find of Geva, Base⁴ Daughter of Hugh Lupus, and several others.

V. Concerning this Bertred, the Wife of Hugh Cyveliok, I cannot omit the Falsities and Absurdities of some Authors, as Powel on the Welsh History, p. 295. and Ferne in his Lacy's Nobility, p. 53. Both of them calling this Bertred by the name of Beatrix, and saying she was the Daughter of Richard Lucy, Chief Justice of England, a most gross falsity. I am very certain, that Hugh Cyvelioks Wife was not Daughter of Lucy, nor ever called Beatrix in any old Deed or Record, though I find by good authority that there was a Woman called Beatrix Lucy, but never Wife of Earl Hugh.

The Death of *Hugh Cyveliok*.

Obiit. 1181.

T*His Hugh, Earl of Chester, died at Leek, in Staffordshire, and was buried at Chester, Anno Dom. 1181. 27 Hen. 2. Hoveden, Pag. 615. With whom, Westminster, Polychronicon, and ⁵Cambden inter Comites Cestriæ, do all agree.*

[Page 5.]

He was Earl of Chester Twenty eight years, and gave the Church of Bettesford to the Prior and Canons of Trentham, after the death of William Barba, who at the time of this Grant possessed the same, a Copy of which Deed, I received from Sir Simon Dews Baronet.

Now because I find that some are displeased at my placing of Amice, sometime the Wife of Ralph Mainwaring; Judge of Chester, among the Base Issue of Hugh Cyveliok, Earl of Chester; and also, that I am informed that three eminent Judges and four Heralds, are of opinion, That she was Legitimate, and not a Base Daughter of Earl Hugh. It is very necessary, that I put down here my Reasons why I have so placed her, protesting withal, that I have not done it out of any prejudicate opinion, or calumny intended in the least, but only for the truths sake according to the best of my judgment, and that after a long and diligent scrutiny made herein; for I must ever acknowledge my self to be extracted out of the Loyns of this Amice, by my own Mother; but you know the old saying of Aristotle, Amicus Plato, Amicus ⁶Socrates, Sed magis amica veritas. Neither were Bastards in those elder Ages of such disrepute as now in our days, Memini me alicubi legisse (saith Spelman in his Glossary on the word Bastardus) Priscos septentrionales Populos etiam spurios admisisse in successionem; and where he farther tells us, that King William the Conqueror began his letter to Alan, Earl of Little Britain, as he did many other more, in these words, Ego Willielmus cognomento Bastardus. Of which Title (it seems) he was not ashamed, otherwise he would never have used it himself.

[Page 6.]

And therefore the Question being no more then this, Whether Amice was a Base Daughter, or no? I will first answer those Reasons which seem to be the chief ground of those worthy Persons aboveſaid, who think Amice was no Baſtard, and then in order ſet down my own Reasons, why I conceive her to be a Baſtard; ſubmitting my ſelf wholly to the judgment of all Learned Perſons herein.

[Page 7.]

'The Reasons that She was
no Baſtard.

FIrſt, *Our Common Law alloweth not that any Lands can paſs in libero Maritagio with a Baſtard Daughter, Coke upon Littl. fol. 21. b. And therefore Amice having Land given with her in libero Maritagio by the Deed, it muſt be preſumed that ſhe was no Baſtard.*

[Page 8.]

Anſw. To which I anſwer, That it is true, the Law is ſo taken at this day with us; but that the Law was ſo taken in the elder ages of Henry the Second, when Hugh Cyveliok lived and upwards, I very much doubt; and if we mark well this Grant, it is the Grant of Earl Hugh to Ralph Mainwaring with Amice his Daughter, in Frank-marriage of the Service of Gilbert, Son of Roger, to wit, the Service of three Knights Fees, by doing the Service of two Knights Fees to the ſaid Earl and his Heirs; which is rather a Release of the Service of one Knights Fee, then the Grant of any Land. But to paſs by this — I ſay, That the Common Law in ſundry things is ⁸altered at this day, from what it was in former Ages, long after Henry the Second, Coke upon Littl. fol. 34. Sect. 39. Coke ibid. fol. 3. a. fol. 8. a. At the bottome of the Page, and on the other ſide (b) at the bottome, Fol. 26. b. Sect. 29. and infinite other particulars may be cited. And that in this particular alſo of paſſing Land in libero Maritagio with Baſtards, the Law ſeems clearly to be altered herein ſince the Reign of Henry the Second. For, the common praſtiſe I

take to be the Common Law, and I shall give you here one Precedent made about the Raign of King Stephen (and doubtles many others might be mustered up from those elder ages, if any curious person would take pains to search old Deeds and Records) which Deed I received from Sir Simon Dewes, transcribed out of a Manuscript in Arundel House in London, belonging antiently to the Barons of Stafford, wherein the old Charts belonging to the Bassets of Drayton-Bassets in Staffordshire were inrolled about Richards the Second's time. Ibid. fol. 67. a.

Ranulfus Comes Cestriæ Willielmo Constabulario & Roberto Dapifero & omnibus Baronibus suis & hominibus Francis & Anglicis totius Angliæ salu-⁹tem. Sciatis me dedisse & concessisse Gevæ Ridell Filiæ Comitissæ Hughes Draytunam cum pertinentiis in libero conjugio, sicuti Comes Hughes ei in libero conjugio dedit & concessit. Et teneat bene & in pace, honorifice, & liberè ut melius & liberius tenuit tempore Hugonis Comitissæ & aliorum meorum antecessorum eisdem consuetudinibus & libertatibus. Testibus Gilberto Filio Ricardi, & Adelizâ sorore meâ, & Willielmo Blundo, & Alexandro de Tresfor, & Rogero de Bellocampo, & Willielmo de Sais, & Roberto de Sais, & Ricardo Filio Aluredi, & Hugone Filio Osberti, & Henrico de Chalder: Apud Saintonam.

[Page 9.]

Wherein Geva is called Daughter of Earl Hugh Lupus, as Amice in that other Deed is termed Daughter of Earl Hugh Cyveliok. Now that Geva was a Bastard is very plain out of Ordericus, a Man that lived in that very age, he tells us, Lib. 10. pag. 787. speaking of Hugh Lupus, his death——Richardus pulcherrimus puer quem solum ex Ermentrude Filia Hugonis de Claromonte genuit, &c. Richard, a brave youth; whom onely Hugh Lupus begot on Ermentrude, Daughter of ¹⁰Hugh de Claremonte, &c. Nor can this be restrained to the onely Son, for then it must have been otherways expressed; and if Hugh Lupus had any other Son or Daughter by Ermentrude, then cannot Richard be said onely to be begotten on her by Earl Hugh, and so Geva was a Bastard, or else Ordericus lies. Also the same Author tells us,

[Page 10.]

Lib. 4 p. 522. *that Hugh Lupus had also many Base Sons and Daughters by several Strumpets, who were almost all swept away by sundry misfortunes; and very probably, if Hugh Lupus had any more Legitimate Children by his Wife, besides Earl Richard, either Son or Daughter, Ordericus would have Recorded them as well as he hath put down others in like Nature, being indeed his usual method through the whole course of his History. And had Geva been Legitimate, then her Issue ought rather to have succeeded into the Earldom of Chester, then Randle de Meschines, after the Death of Richard, Earl of Chester, for as much as the Sister and her Heirs, ought to inherit before the Aunt and her Heirs; and howbeit many Earldoms have descended to the Heirs-males, and not to the Heirs General, yet in this case were no Heirs-male, but two ¹¹Females, an Aunt Legitimate, who had it, and a Sister not Legitimate: And show me a Precedent, where ever the Heirs of an Aunt inherited before the Heirs of a Sister, both legally born, and no Heirs-male left, unless in case of Forfeiture by Treason, or some other great cause to hinder the same.*

[Page 11.]

Secondly, *Add to these the words of Glanville, Chief Justice of England, who lived under Henry the Second, in that very age with Amice, Lib. 7. cap. 1. Quilibet liber homo quandam partem terræ suæ cum Filia sua, vel cum aliqua alia qualibet muliere dare potest in Maritagium, siue habuerit hæredem, siue non, velit hæres vel non, imò & eo contradicente. And if a Man might give Land then in Free-marriage with any Woman whatsoever, then he might give it to his Bastard, and then the Law is now changed, for now it must be of the Donors Blood, and a Bastard is now said not to be of the Donors Blood, Quasi nullius Filius, and it seems to me, that in those elder ages, Bastards were reputed of the Blood by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Cousin: Besides, our Laws were then imperfect, dark, and obscure in most things, till Bracton, ¹²under King Henry the Third, compiled the Body of our Laws, and brought them into a method.*

[Page 12.]

And now I have done concerning this chief Reason, whereupon

those worthy Judges grounded their Opinions; and we daily see Opinions of Lawyers follow the putting of the Case, which many times upon mature deliberation, and hearing of the Case well argued, may then be of another Opinion.

Now follow the Arguments of lesser moment, which I perswade my self were no Grounds for the Judges aforesaid.

II. **T**He disparity of the years between Hugh Cyveliok and Bertred his Wife, may suppose he had a former Wife; for Bertred was but Twenty six years old at the Death of Earl Hugh 1181. as appears by the Inquisition taken 30 H. 2. 1183. after the death of Hugh Cyveliok; and Hugh was Earl of Chester Twenty eight years, which was one or two years before Bertred was born; besides what years were run up of his age before his Father Randle died, which may be supposed to be ¹³a competent term of years; and then it is probably he had a former Wife, and that he staid not unmarried so long as till Bertred was fit for marriage.

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Answ. Now let us examine the Matter a little, it will give us some light, Robert, Earl of Glocester, married Mabill, Daughter and Heir of Robert Fitz-Haimon, Anno Dom. 1110. So Stow in his Chronicle. See also Seldon's Tit. Hon. pag. 647. By her he had Issue four Sons and two Daughters. Maud, the younger Daughter married Randle de Gernoniis, Earl of Chester, Father to Hugh Cyveliok. Vincent upon Brook, p. 216. Now suppose we, Maud to be the fourth Child, probably she was not born till about the year 1117. or thereabout; and that about the year 1139. she was married to Earl Randle, whereby Robert, Earl of Glocester, strengthened his party for Maud the Empress; at that time she cannot well be supposed to be above Twenty two years old, if she were so much. Now Earl Randle died 1153. So that Hugh Cyveliok could not possibly be above Twelve years old at his Fathers death, he might be much less: But suppose we in a middle way, that he was six years old at his Fathers death, which is ¹⁴more then can

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be well affirmed, then could not Earl Hugh be above Seven or eight years elder then Bertred his Wife; And what great matter is this? I my self was eight years older then my Wife when I was married; but it is much more probable that he never had any other Wife, because he had many Bastard Sons and Daughters, whose heat of youth might by a very timely marriage, have been possibly prevented, or at least asswaged in some measure.

III. Bertred, the Wife of Hugh Cyveliok, was a witness to the Deed in Frank-marriage with Amice, and Amice had a Daughter called Bertred, after the name of the Countess. Ergo, Probably Amice was no Bastard.

Answ. Truly this is of so little weight, that it will need no answer; for I yet apprehend no reason in it.

IV. Roger Mainwaring, Son of Ralph Mainwaring, calls Randle Blundevil, Earl of Chester and Lincoln, his Uncle in another Deed; wherefore it is to be supposed that Amice was no Bastard, otherwise Roger durst not have presumed to have called the Earl Uncle.

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¹⁵ Answ. *Histories, Deeds, and Records, are full of Examples in this nature, where we find Bastards frequently called Cofin, Brother, Uncle, Son, and Daughter. For example, Robert, Earl of Gloucester, Base Son of King Henry the First, is frequently called in Histories, Brother to Maud the Empress, Hoveden, p. 553. He is also so stiled in a Deed made by Maud the Empress her self, Seldon's Tit. Hon. p. 649. Called also Cofin to King Stephen, Ordericus, pag. 922. Reginald, Earl of Cornwal, another Base Son of Henry the First, stiled Avunculus Regis Henrici Secundi, by Hoveden, pag. 536. Robert and Ottiwel, two Bastard Sons of Hugh Lupus, frequently called Filii Hugonis Comitis Cestriæ, and Ottiwel stiled Frater Ricardi Comitis Cestriæ, Ordericus, p. 602. & 783. & 870. Geva a Base Daughter of Hugh Lupus, stiled in old Deeds Filia Hugonis Comitis; and there also she calls Earl Randle her Cofin, Monasticon, Part 1. pag. 439. Also*

Richard Bacon, *Son of another Base Daughter of Hugh Cyveliok, calls Randle Blundevil, Earl of Chester, his Uncle, in another Deed, as Mainwaring in like manner here stiles him in this Deed, Monasticon, Part 2.* ¹⁶p. 267. *Every Man that is but the least versed in Antiquities, knows these things to be very usual.* [Page 16.]

The Reasons that *Amice* was a Bastard.

I. **I**F Hugh Cyveliok had no other Wife but Bertred, then Amice must certainly be a Bastard; for she was not a Daughter by Bertred, as is granted on all sides.

But Hugh Cyveliok never had any other Wife but Bertred. Ergo, Amice was a Bastard.

Now the Minor is to be proved by the Affirmer, Oportet Affirmentem probare: For as yet I never saw the least proof thereof, either by Deed, Record, or any Ancient Historian, nor yet any inducement of good reason to incline my belief of it; and till this be done it is unreasonable to impose it upon any Mans belief, by supposing that he had another Wife, for suppositions are no proof at all. It is not enough to suppose Amice might be by a former Wife, but it must be clearly proved, or strongly inferred ¹⁷ from solid Reason, that it is so, and that Hugh had a former Wife. [Page 17.]

Neither is it a sufficient answer hereunto to say, That it is unreasonable to conclude all Children Bastards, whose Mothers cannot be proved, God forbid: But in this Case we find a Wife certainly Recorded, and a Son and four Daughters (who were afterwards Coheirs, and carried away all Earl Hugh's Lands) clearly proved by Records and Antient Historians; and also Earl Hugh is certainly known to have had many Bastards both Sons and Daughters, which gives occasion of strong suspicion, that Amice was a Bastard, she being neither Recorded by any Historian, nor ever had or claimed any Land as a Coheir; and therefore here is a necessity of proving

a former Wife; which, for my part, I believe firmly Earl Hugh never had.

2. *Whatsoever is given in Frank-marriage, is given as a Portion. Now the Release of the Service of one Knights Fee in Frank-marriage, seems not a competent Portion for a Legitimate Daughter of the Earl of Chester, especially for the eldest Daughter, for so she must be, being of the first venter, which always is more worthy then the se-¹⁸cond, if she were at all Legitimate. And we find the other Daughters married to four of the greatest Earls in England. All which is a strong presumption, that Amice was a Bastard and no Legitimate Daughter.*

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To this it may be answered, That possibly Earl Hugh might give Amice a great Portion in Money, though she had no Lands; and I say possibly too, he might give her no Money, or at least nothing considerable. Which great Portion in Money, when it shall appear to be true, may take off the strength of this Argument or Second Reason, till then it must be very pressing.

3. *The Antient Historians of our Nation, as Polychronicon, writ by the Monk of Chester, Henry Knighton, the Monk of Leicester, and others; also Stow and Cambden have Recorded the lawful Daughters and Coheirs of Earl Hugh. And so the Record of 18 Hen. 3. And had Amice been a Legitimate Daughter, it is likely that these Historians would not all have omitted her, but of her there is Altum silentium among all the Historians and Records which I have yet seen, though in-¹⁹deed I look upon this onely as a probable, not as a sure evincing Argument.*

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These were the Reasons which inclined my Opinion to place Amice in that order as I have done; but since there are some Learned Men of another Opinion, I must leave every Person to the dictate of his own Reason.



21 THE
D E F E N C E
O F
A M I C I A,
Daughter of *Hugh Cyveliok*,
Earl of *Chester*.

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Do very much wonder that you should so peremptorily call *Amicia* a Base Daughter of *Hugh Cyveliok*, unless you had more sure grounds to go upon: And though it be onely my task to defend the said *Amicia*, yet I do suppose I shall make it appear before I ²²have done, that you go upon no absolute certainty, in calling her that was Mother to *Richard Bacun*, Founder of the Priory of *Roucester* in *Staffordshire*, another Base Daughter of the said *Hugh Cyveliok*, or in calling *Geva* a Base Daughter of *Hugh Lupus*.

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At present give me leave to remind you what you have been formerly told, *viz.* That those Heralds that gave to *Mainwaring* of *Peover* the quartering of the Earl of *Chester*'s Coat in Queen *Elizabeth*'s time, were Mr. *William Cambden* and Mr. *Sampson Erdeswick* (Persons, who very well understood themselves) and I do not know why you should so much mislike their boldness and ignorance (as you call it) for their so doing: For, though we did not antiently quarter that Coat, it not being usual in that age, when that match was made, for any so to do; and that it may

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perhaps in strictness be true, that it doth yet onely belong to those of the whole Blood to Quarter Coats, and that to shew their Right; yet it being now a common practise for those who are of the half Blood also to do it, to manifest, That they descend of the same Father that ²³those of the whole Blood do, I know not why it should be accounted a crime in us, more then in others in the like Case.

As for your Objecting, That *Mainwaring* was not then an equal Competitor, to have married a Coheir of the Earl of *Chester*, the Coheirs being married to Four of the greatest Peers of the Kingdom: We do not say, That he either was an equal Competitor, or that she was a Coheir to Earl *Randle*, she being the Daughter to *Hugh Cyveliok*, by a former Wife, and so but half Sister to the said Earl *Randle*; however, that could have been no substantial Argument to prove that *Amicia* was not Legitimate.

1. Because, sometimes some particular Persons have the fortune to marry Wives far beyond their Degrees or Estates.

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2. Neither was Sir *Ralph Mainwaring* so inconsiderable a Person, as perhaps you may conceit him to be. For, besides that, Sir *Roger Mainwaring*, Son of the said Sir *Ralph*, did after the death of the ²⁴said Sir *Ralph* give to Sir *William Mainwaring* his younger Son, *Peover*, as also some other Lands; the said Sir *Ralph* had also the Lordship of *Waburne* in *Norfolk*, and the Lordships (or great part) of *Rode*, *Blakenhal*, *Warmincham*, *Northerden*, *Ashton juxta Kelsall*, *Henbury*, and *Pexhull*. *Wilstaston*, *Great Warford*, *Little Warford*, *Whelock*, *Winnington*, *Cokishall*, *Tatton*, *Senellestune*, *Smalwood*, and half of *Pichmere*, as also other Lands in *Cheshire*; the most of which came to Sir *William Trussel*, who about *Edward* the First's time, married *Matilda*, the sole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger*, Son of the said Sir *Ralph* and *Amicia*: And the said Sir *Ralph* was Cheif

Justice of *Chester*, which antiently hath been a place of that great repute that Dukes of *York*, *Glocester*, *Exeter*, and *Ireland*; and Earls of *Nottingham*, *Wiltshire*, *Suffolk*, *Shrewsbury*, and *Derby*; besides, other great Persons have heretofore enjoyed the fame.

3. Neither was the Case the same with the other Daughters of the Earl of ²⁵*Chester*, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*; whereas those Four came to be such great Fortunes upon the death of their Brother *Randle*, Earl of *Chester* and *Lincoln*, without Issue, to whom they then became Heirs, they being his Sisters of the whole Blood; and though all, or most of them were married before they came to be his Heirs, yet the said Earl *Randle* having never had Issue, the expectation of that Estate added to their other Portions, must needs make them very considerable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife.

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And whereas you do acknowledge that you have been informed, That Three eminent Judges, and Four Heralds are of opinion that *Amicia* was Legitimate, and not a Base Daughter, you received that information several years ago; but you were also lately told by one, whom I hope, you have no reason to discredit; that since then, several other Learned Judges and He-²⁶ralds had been consulted. All which did concur in the same opinion, that *Amicia* was Legitimate.

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But before I come to the Reasons that are by you alleaged, either for or against *Amicia*, give me leave to recite these Three Deeds following, that those who read them, and the Reasons on both sides, may clearly understand the full State of the Case.

HUgo Comes Cestr' Constabular' Dapifer' & omnibus Baronibus suis & Universis Ballivis & hominibus suis Francis & Anglicis tam præsentibus quam futuris salutem. Sciatis me dedisse & concessisse & hac præsenti Karta mea confirmasse Ra-

dulpho de Menilwarin cum Amicia Filia mea in libero maritagio servitium Gilib. filii Rogeri, scilicet, servitium trium Militum faciendo michi servitium duorum Militum ille & hæredes sui michi & hæredibus meis, quare volo & firmiter præcipio ut nullus super hoc eum vel hæredes suos vexet, vel amplius quam servitium duorum Militum de hoc prædicto tenemento requirat. Teste R. Abbate Cestr. Bertreia Comitissa Cestr. Sim. Thuschet, Rogero de Livet, Gilib. filio Pigot. Rob. fratre²⁷ suo, Frumb. de Ridford. Willielmo de Meinilwarin, Rob. filio Ham. Bettr. Cam. Rob. de Meinilwarin, Ran. de Lee, Rad. Clerico, Petro Clerico qui hanc Kartam fecit & multis aliis apud Lee.

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RAdulfus de Meidnilwar' omnibus præsentibus & futuris ad quos præsens scriptum pervenerit salutem. Sciatis me dedisse & concessisse & præsentī carta mea confirmasse Henrico de Alditeleg in liberum maritagium cum Bertrea filia mea Smelewde cum pertinentiis & Senellest': Cum pertinent. & dimid' Pichemere cum pertinentiis suis & i. Marc. de redditu annuo in Civitate Cestr' de terra quæ fuit Fagun. quam Robert' filius Ermwi de me tenuit illi & hæredibus suis qui de dicta Bertrea filia mea pervenient habend' & tenend' de me & hæredibus meis in feodo & hæreditate libere & quiete plene & pacifice in bosco & plano in pratis & pascuis in aquis viis & in semitis in vivariis & in molendinis & in omnibus locis & libertatibus prædictis terris pertinentibus sicut liberum maritagium melius & liberius teneri pot': Et ego & hæredes mei illi & dictis hæredibus suis contra omnes homines dictas terras Warrantiza-²⁸bimus. Test' Ran' Com' Cestr. Hug' Com' Ultonia, Phil' de Orreby tunc Justic. Cestr. Joh. de Ptell' Hug. Malebiff. Ric. de Vern. Ran. de Meidnilwar. Clerico. Lidulf. de Tuam' Rob. de Peris, Ric. de Kingesl. Norm. Pant. Tho. de Orreby, Alured de Sulinni. Pet. Chan. Gg. de Aldith. Ric. de Rodest. Clerico & multis aliis.

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OMnibus hanc Cartam visuris vel audituris Rogerus de Menilwarin æternam in Domino salutem. Noverit Universitas

vestra me pro salute animæ Domini Ranulphi quondam Comitiss Cestriæ & Lincolnæ Avunculi mei & pro salute animæ meæ & animarum antecessorum & successorum meorum dedisse concessisse & hac præsentî Carta mea confirmasse Deo & Beatæ Mariæ & Abbati & Monachis de Deulacreffe & eorum Grangie de Biveleg. in liberam puram & perpetuam Elemosynam liberam communam in bosco meo de Pevere, scilicet, Ut accipiant de eodem bosco husbot & haybot rationabiliter per visum alicujus forestariorum meorum quantum necesse habuerint, sine impedimento aeriarum nisorum meorum ubicunque nidificaverint, Præterea dedi eis libe-²⁹ram pessionem & quietam de pannagio quinquaginta porcis quandocunque voluerint in prædicto nemore meo de Pevere, pro hac autem donatione & concessione mea, Ego Rogerus prædictus & hæredes mei de prædictis Abbate & Monachis de Deulacreffe nichil exigere poterimus, nisi orationes & suffragia ordinis Cisterciensis. Ego vero & hæredes mei sepeditam donationem & concessionem meam sepeditis Abbati & Monachis & Grangie de Biveleg contra omnes gentes Warrantizabimus imperpetuum. Et ut hæc donatio mea rata & inconcussa in sempiternum perseveret eam præsentis Cartæ testimonio & Sigilli mei impressione roboravi. Hiis testibus Willielmo de Menilwarin. Willielmo Capellano de Lanton. Ricardo de Moston. Bened. de Cawdray, Johanne de Motlawe, Willielmo de Pevere, Hugone de Weloc. Nicolao de Wereford, Gilberto Gekell. & aliis.

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And now I shall consider of your Answer to the first Reason on the behalf of *Amicia*; which Reason, I think, should have been expressed to this, or the like effect, *viz.*

Our Common Law neither now doth, nor heretofore ever did allow, that ³⁰Lands or Services could be passed *In libero Mari- tagio* with a Bastard Daughter by the Reputed Father, because a Bastard is not *De sanguine Patris*. And therefore *Amicia* having Services given with her *In libero Maritagio* by her Father, it necessarily follows that *Amicia* was no Bastard.

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To which, your Answer is, that it is true, the Law is so taken at this day; but you much doubt, whether it was so taken in the

elder Ages of *Henry* the Second, and upwards; and to make good what you say, you cite my Lord *Coke upon Littleton* in several places; as also *Glanvile*, Cheif Justice of *England*, who lived in the same time that *Amicia* did; and you also alledge, that you have found a Precedent where Lands were given by the Father in Free Marriage with his Base Daughter.

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To what you urge out of my Lord *Coke*, I do thus say, That I do conceive the Common Law, where not altered by Parliament, is the same at this day that it was formerly; and therefore my Lord *Coke on Littleton*, telling us *Pag. 115. b.* that it is a Maxim of the Law, *That whatsoever was at the Common Law,* ³¹*and is not ousted or taken away by any Statute, remaineth still.* I might thence argue, That if it had ever been at the Common Law, that a Man might have given Lands or Services *In libero Mari- tagio* with a Bastard, or one that is not of the Blood, that it would be lawful to do so still, because that part of the Law is not ousted, or taken away by any Statute; but a Man cannot do so now: And therefore the Common Law never was, that a Man might give Lands or Services with a Bastard in Free Marriage, or to one that was not of the Blood. So that those places which you have cited, do not prove, That the Common Law at this day doth vary from what it was in former ages in any particular, but onely that it was taken to be otherwise in those days; and it is but just like some Cases in our *Reports*, which have at several times been adjudged directly contrary to each other, but notwithstanding that, the Law was still the same.

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But that I may come as near you as I can, I shall acknowledge, that though the Common Law was ever the same, where not altered by Parliament, yet in for-³²mer Ages they did in some particulars, take the Law to be otherwise than they now do; and if you could prove, that they did so in this Case of Free Marriage, it would take off much of the strength of this Argument, because that Antient Deeds and Grants (according to what my Lord *Coke on Littleton*, says *fol. 8. b.* at the bottom) are to be expounded as the Law was taken to be at the time of the Grant: But this is

so far from making against my opinion, that I think it doth add very much strength thereto; for if it had been taken in former Ages, that Lands might have been given in Free Marriage with a Bastard, or one not of the Blood, it certainly would sometime or other, have been so observed by some of the Sages of the Law; for where the Law hath been taken in one Age after one manner, and in another age after another manner, it is so remarkable, that it could not pass unobserved by all.

As to what you alleage out of *Glanvil*, who says, *Quilibet liber homo quandam partem terræ suæ cum Filia sua vel cum aliqua alia qualibet muliere dare potest in Maritagium*. I do conceive it is the same ³³thing in Law, and shall be so intended, as if it had been expressly said, *With any Woman of his Kinred*; and that for these Reasons.

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First, Because though such kind of Expressions seem to be Universal, and without any exception at all; yet they shall not be so largely taken, but shall be expounded so as may agree with the Laws of that Kingdom or Nation, to which they particularly do relate; and for this I shall give you an example out of Scripture it self. In the Fourteenth Chapter of *Deuteronomy*, and the Twenty sixth Verse, there was a Liberty given to the *Jews* in some Cases, and at some of their Feasts, to eat *whatsoever their Soul lusted after, and whatsoever their Soul desired*: And yet this was not to be expounded universally of all Meats whatsoever (in case they desired the same) but must be meant onely of such Meats as were legally clean, and allowed them to eat by their Law. And thus, when we also say, That any Man that hath Money enough, may buy Lands when he pleaseth, it shall not be understood of any Man whatsoever: For, a ³⁴Traytor, or a *Jew*, or one that is convicted of Felony, or an Alien cannot purchase Land in *England*; but it shall be understood of one that is by Law enabled so to do: And so in like manner the words *Cum alia qualibet muliere*, must be understood onely of such a Woman as is capable of such a gift, which a Woman that

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is a Bastard, or not of the Blood, or a Jew, or an Alien, &c. is not. For in these kind of Gifts, as Mr. *Brañton* tells you, *Lib. 2. cap. 11.* the Land so given is *Liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore.*

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Secondly, Because I do conceive that *Glanvil* hath immediately contradicted himself, unless by these words, *Cum aliqua alia qualibet muliere*, he understands a Woman that is of the Blood of the Donor: For he tells us in the same Chapter, and the very next words to those that you cite, That none can give Lands *in remunerationem servitii sui*, to hold good after the death of the Donor, unless there be Seisin in the life time of the Donor, which is untrue, If a Man having a mind so to reward his Servants, can give Lands with his Woman-servant ³⁵to a stranger, or with his Woman-servant to his Man-servant in Free Marriage. For, where Lands are given *In libero Maritagio*, according to Law, there needs no Seisin; and where they are given contrary to the Law, *viz.* (to one not of the Blood of the Donor) Seisin doth onely make it an Estate for Life, as my Lord *Coke* says in his *Institutes*, *Part 1. pag. 21. b.* So that it seems clear, *Glanvil* by the words *Cum aliqua alia qualibet muliere*, understands one of the Blood of the Donor, as well as I hope hereafter to prove that *Brañton* doth by the words *Cum aliqua muliere*.

Thirdly, Because that though *Glanvil*, *lib. 7. cap. 1.* says, A Man may give part of his Heritage to his Bastard; and that also *Brañton* in his Second Book, and beginning of his Seventh Chapter tells us, That Lands may be given *Bastardo in Maritagium cum aliqua muliere*; yet neither of them hath one word at all to prove, That Lands may be given to a Man *cum Bastarda*, whereas in this Case of Frank-marriage, the party *with whom* the Land is given, not the party *to whom* the Land is given, is the principal thing that is considerable herein.

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³⁶Fourthly, Because my Lord *Coke* in the *First Part of his Institutes*, *fol. 21. b.* tells us, That if the King give Land to a Man with a Woman of his Kinred in Frank-marriage, and the Woman dieth without Issue, the Man in the Kings Case shall not

hold it for his life, because the Woman was the cause of the Gift ; but it is otherwise in the Case of a common Person. And to prove this, in the Margent he cites, 9 H. 3. *Dower* 202. Whereas, if you look *Fitz-Herberts Graund Abridgment*, 9 Hen. 3. *Dower*. 202. the words run thus, *Si le Roy donne certaine tre a un homme ove une feme en mariage, si le bar' nad issue pur la feme il naver la tre apres la morte la feme mes cest issu q' la feme au devaunt enherit, &c.* So that you see in these Cases of Free Marriage, my Lord *Coke* makes no difference between these words, *Ove une feme*, and these words, *With a Woman of his Kinred* ; and by the same Reason, being in the Case of Frank-marriage also *Glanvile's* words, *Cum alia qualibet muliere*, are to be understood, with any other Woman of his Kinred onely. Also, which is very observable, *Glanvile* was first made Justice of England, 26 Hen. 2. ³⁷as Mr. *Dugdale* tells you in his Chronology of Lord Chancellors, Lord Keepers, Lord Treasurers, Justices, &c. which was about Forty five years before the 9 Hen. 3. Therefore what likelihood is there, that the Law should be differently taken in so short a time, from what it was in the time of *Glanvile*, and especially since the Statute of *Westminster*, the Second, was not made till about Threescore years after the Nineth of King *Henry* the Third.

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Fifthly, Because the Author of the Book called *The Laws Resolutions of Womens Rights*, Printed by the Assigns of *John More*, 1632. doth tell us, That in old time these Gifts in Frank-marriage were to be made to them of the Kinred, as well as now. His words in his Thirty third Section of *Frank-marriage*, pag. 73. are these. *It was, as I suppose*, more frequent in the old time, that Men gave Lands with their Daughters in Marriage, then it was at this day ; but now as then if a Man liberally and freely, without any Money or other considerations, save onely Love and Natural Affection, give Lands or Tenements to another Man, with a Woman which is a Daughter, ³⁸Sister, or Cousin to the Donor in Frank-marriage, whether it be *tempore Matrimonii, vel ante, vel post*. This word Frank-marriage maketh an Estate of Inheritance, viz. to the Donees, and the Heirs of their Two

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Bodies, and they shall hold quite of all manner of Services (except the pure Fealty) till the Fourth degree be past; but the Issue in the Fifth degree, and his Descendant, shall hold of the Donor and his Heirs, as they hold over.

Sixthly, Because the Author of the old Treatise, commonly called *Fleta*, in the Third Book, and Eleventh Chapter, *De donationibus in Maritagiis*, doth imply that these kind of Gifts must be made to them of the Kinred; his very words are these, *Est autem quoddam Maritagium liberum ab omni servitio solutum donatori, vel ejus hæredibus usque ad tertium hæredem vel usque ad quartum gradum faciendum & debent gradus sic computari, ut Donatorius primum faciat gradum, hæres ejus secundum gradum, hæres hæredis tertium, & hæres secundi hæredis quartum, qui quidem tenebitur ad servitium ut ad homagium, prius autem minime ne Donator vel ejus hæredes per ³⁹homagii acceptionem a reversione repellantur, sed in quarto gradu pro eo quod tunc vehementer presumitur quod terra non est pro defectu hæredum donatoriarum reversura, quia etsi propinquos hæredes non habeat, vel cum habeat & defecerint ad donatorem vel ejus hæredes qui homagium ceperint non erit terra reversura, dum tamen aliquis remotus de consanguinitate appareat, qui jus in hæreditatem poterit vindicare alioquin evanescit homagium, & revertetur. Et cum de sanguine homagium factum fuerit, extunc obligatur homo ad servitium, quia servitium semper sequitur homagium, &c.*

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Seventhly, Because *Bracton*, lib. 2. cap. 7. par. 3. says thus, *Et sciendum quod terra datur aliquando ante sponsalia & propter nuptias a patre mulieris vel alio parente ipsi marito cum muliere aliqua vel utrique simul, sc. tali viro & uxori suæ (quod idem est) & eorum hæredibus vel alicui mulieri ad se maritandam, &c.* And presently after, *Fit etiam talis donatio ante Matrimonium contractum, aliquando in ipso contractu, aliquando post contractum.* Which in my apprehension is as much as to say, That this kind of Gift can onely be made by the Father, ⁴⁰Mother, or some other Kinsman, (for the word *parens* or *parent* in Latine and French hath oftentimes that signification) and of this opinion

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was my Lord *Coke*. For in his *Institutes upon Littleton*, pag. 21. *b.* he tells you, That one of those things incident to a Frank-marriage is, that the Woman that is the cause of the Gift, be of the Blood of the Donor, and for this as appears Letter (1) amongst other Proofs, he in the Margent cites *Bracton*, lib. 2. cap. 7. Also, which is very considerable, Mr. *Bracton* here useth this expression, *Cum muliere aliqua*, and yet meaneth a Kinf-woman, and why then should we think that Mr. *Glanville* doth not mean a Kinfwoman, though he use this expression, *Cum alia qualibet muliere*, and especially since my Lord *Coke* in the very Page of his *Institutes* last mentioned, quotes Mr. *Glanville*, lib. 7. cap. 18. And amongst others, that expression of his *Cum aliqua muliere in Maritagium*; and also in the Margent cites *Glanville*, lib. 7. cap. 1. (the very place on which you frame your Argument) which he would never have done, if he had thought the opinion of *Glanville* had been contradictory to his ⁴¹own. And if there had been any such thing, as that the Law in this point had been severally taken in so very short a space, as betwixt the time of *Bracton* and *Glanville*, sure my Lord *Coke* would in that place have taken notice thereof.

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Eightly, and lastly, The Law appears to be the same in this Case which it was in *Glanville's* time, because as *Littleton* tells us in his 271 Section, Gifts in Free-marriage were by the Common Law before the Statute of *Westminster* the Second. Now the Common Law hath always been the same, and as my Lord *Coke* tells us in his First Part of *Institutes*, fol. 115. *b.* hath no Controuler in any part of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains still: But the Parliament hath made no alteration concerning Gifts in Free-marriage, except the said Statute of *Westminster* the Second, cap. 1. By which they turned the Estate that passed by those Gifts in Fee-simple into an Estate Tail, (all Inheritances being Fee-simple before the said Statute) so that in other respects the Law in this Case remains as it did. ⁴²And that this is so, I conceive is very clear, because, I suppose, neither you, nor any

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other person, can tell any one particular in which the Common Law is, or hath been altered but by Act of Parliament: Neither could there be any occasion to alter the Common Law, or to take it otherways in this particular then they did formerly, because since there were Estates in Tail, there could be no great occasion to make Gifts in Free-marriages; and therefore my Lord *Coke* says in his First Part of *Institutes*, fol. 178. b. That such Gifts are almost grown out of use, and serve now principally for Moot Cases and Questions in the Law, that thereupon were wont to arise.

Neither is there any weight in what you say, That it seems to you, that in those elder Ages Bastards were reputed of the Blood, by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Cousin; for, by the same Reason you should repute them of the Blood now, this Age being as civil to them in their expressions, as any former Age could possibly be.

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⁴³ And for the Precedent you give me, wherein you say Lands were given *in libero maritaggio* with a Bastard, I conceive it will not hold;

Because it doth not certainly appear, that *Geva* was a Bastard; for, in all the *Records* that you cite, she is called Earl *Hugh's* Daughter; and in one of them, she calls *Randle* Earl of *Chester* her Cousin, which makes it probable that she was *Legitimate*, especially, since I do not find by any *Deed*, *Record*, or *Author* whatsoever, that she is at any time called a Bastard.

As for your saying, That it is plain out of *Ordericus*, p. 787. that *Geva* was a Bastard, because, speaking of *Hugh Lupus* his death, he adds these words, *Richardus autem pulcherrimus puer quem solum ex Ementrude Filia Hugonis de Claromonte genuit*. I am not satisfied, but he might as well mean, that he was the *only Son* which Earl *Hugh* had by *Ementrude*, as that he was the *only Child* that he had by her. For, there is no necessity to take the word *Solum* *adverbially*; neither is it marked as an *Adverb* in *Ordericus* his Book, though it be so in yours, and yet

in his Book *Adverbs* ⁴⁴are usually marked. And though that *Ordericus* (if his meaning were so) might have worded it more clearly, yet he many times expreffeth himself worfe then he doth here, and particularly *Pag.* 871. And though he tells us, *Pag.* 522. that *E pellicibus plurimam sobolem utriusque sexus genuit*; yet he doth not say that *Geva* was one of them. [Page 44.]

Neither is there any force in what you alledge, that probably if *Hugh Lupus* had any more *Legitimate Children* by his Wife besides Earl *Richard*, either Son or Daughter, that *Ordericus* would have Recorded them as well as others, being indeed his usual method through the whole course of his History. For he could have no *Legitimate Son* but Earl *Richard*, unless he had another Wife besides *Ementrude* (*Ordericus* being exprefs therein) and possibly for some Reasons he might have another Wife besides *Ementrude*: But whether *Geva* was by a First or second Wife, I know no necessity to conclude that *Ordericus* should Record her, I finding no such usual method of his, as this which you speak of: For he doth not (that I see) make it his business to Record what ⁴⁵Wives or Children the Earls of *Chester*, and other great Men had, but onely speaks of them occasionally, and so he also doth of some of their *Illegitimate Children*; but if he made it his design to give an exact account of these things, he ought to reckon *Geva*, either amongst the lawful, doubtful, or illegitimate Children of *Hugh Lupus*. [Page 45.]

And as to your Objection, That if *Geva* had been Legitimate, her Issue ought rather to have succeeded into the Earldom of *Chester*, then *Randle de Meschines*, after the death of *Richard* Earl of *Chester*, That doth not at all follow, because, it is possible the Earldom of *Chester*, at that time (as most times Earldoms anciently were) might be Entailed on the Heirs-males onely, and then the Male Line being extinct, why might not the King confer it as well upon *Randle de Meschines*, who was a near Kinsman, as upon a stranger? Which later course is also usual at this day. And it is very probable, that the Earldom was Entailed on the Heirs-males onely; for *James York* in his *Union of Honor*, p. 105.

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says, That this *Randle* was made Earl by Grant of King *Henry* the First; and ⁴⁶if so, it came not to him by Descent: So that all which you here object is fully answered. But if it had been so, that the Earldom had been to Descend to the Heirs General; if *Geva* was Daughter of *Hugh Lupus* by another Wife, besides *Ementrude*; then the Earldom of *Chester* would have Descended from Earl *Richard* to *Randle Meschines* by his Mother, being Aunt of the whole Blood to *Richard*, and not to his Sister *Geva*, or her Issue, they being but of the Half Blood to him.

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And whereas you desire me to shew you a Precedent where-ever the Heirs of an Aunt inherited, before the Heirs of a Sister, both legally born, and no Heirs-male left, unless in Case of Forfeiture by Treason, or some other great cause to hinder the same. I shall now shew you where an *Honor* in such a Case came to the Heirs of the younger Sister, and not to the Heirs of the elder Sister, which is full as much as if it were done in the Case of a Sister and an Aunt. If you peruse the *Magazin of Honor*, Collected by Mr. *Bird*, and enlarged by Sir *John Doderidge*, One of His Majesties Justices of the *Kings Bench*, pag. 96. you ⁴⁷will there find, That whereas *Radulfe*, Lord *Cromwel*, being a Baron by Writ, died without Issue, having Two Sisters, and Coheirs, *Elizabeth* the Eldest married to Sir *Thomas Nevil*, and *Joan* the Younger married to Sir *Hunt Bourcher*: He who had married the Younger Sister, was called to the Parliament as Lord *Cromwel*, and not the said Sir *Tho. Nevil*, who had married the Elder Sister; so that you see no convincing Argument can be brought from the enjoyment of the Earldom by *Randle de Meschines*, however the Case prove to be.

I do therefore still conceive, That it is very clear that Lands or Services never were in any Age passed, *In libero Maritagio* with a Bastard, or with any one that was not of the Blood, but onely for Term of Life, and that with Livery and Seisin; and consequently, all persons to whom such *Deeds* or *Grants* were made (unless for life only) are certainly to be concluded *Legitimate*; and if you will bring a *Convincing Precedent* to the con-

trary, do not produce a *Record* or *Deed* of Lands or Services given with one that you suppose to be a Bastard, or not of the Blood; but first clearly ⁴⁸prove, That the party was certainly a Bastard, or not of the Blood, by some *Deed*, *Record*, or *Ancient History*, and shew Lands or Services so given with her, and then there will be some strength in such a Precedent.

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But what will you say, If this *Deed* which you alledge to be made to *Geva*, will not at all concern *Amicia*, if *Geva* were a Bastard. If you peruse what my Lord *Coke upon Littleton*, says, *pag. 21. b.* he will there tell you, That these words *In liberum Maritagium*, are such words of art, and so necessarily required, as they cannot be expressed by words equipollent, or amounting to as much. As if a Man give Lands to another with his Daughter *In connubio soluto ab omni servitio*, &c. yet there passeth in this Case but an Estate for Life; for seeing that these words *In liberum Maritagium* create an Estate of Inheritance against the general Rule of Law, the Law requireth that they should be legally pursued. And in this Deed to *Geva*, the words are not *In liberum Maritagium*, but *In libero Conjugio*; and so are but like the words *In connubio soluto ab omni servitio*, which make but an Estate for ⁴⁹Life, and so might be passed either to a Bastard, or any other person whatsoever. And if you look well on the Deed to *Geva*, it is worded as if it intended onely an Estate for Life, there being no mention of her Heirs, and running also in the singular number, *Et teneat bene & in pace*, &c. *Ut melius & liberius tenuit*, &c. Also, if you observe my Lord *Coke upon Littleton*, a little before on the same Page, he will tell you, that Four things are incident to a Frank-marriage: The first whereof is, That it be given for consideration of Marriage, either to a Man with a Woman, or as some have held, to a Woman with a Man, (and with this *Bracton*, *lib. 2. cap. 7.* doth accord.) And the fourth thing is, That the *Donees* shall hold freely of the *Donor*, till the fourth degree be past, (with which the old Treatise called *Fleta*, *lib. 3. cap. 11.* doth agree.) For both which Reasons, this Gift cannot be a Gift in Frank-marriage,

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because, what is here given, is given to *Geva* alone, and not to an Husband with her; as also, there are here *no Donees*, but *one Donee* onely, and the Estate was not to continue till the fourth degree ⁵⁰ was past, but was onely an Estate intended for the Life of *Geva*, as appears before; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditeleghe* with his Daughter *Bertred*, was given in Free-marriage, and their Heirs are mentioned in both the *Deeds*: It remains therefore clear, That the Deed to *Geva* was not a Gift in Frank-marriage, and is also very uncertain, whether *Geva* was a Bastard, as you suppose.

The second Reason alledged to prove, That *Amicia* was Legitimate, hath also yet its full strength, and is not at all weakened by any thing that you have said: For, I think it will still appear, that Earl *Hugh* was much Elder then his Wife *Bertred*; and therefore probably had a former Wife, who dying and leaving him no Issue-male, it is no wonder at all, if he that had so great an Estate, did afterwards marry a Lady that was very much younger than himself. And though you do affirm, That Earl *Hugh* could not be above Seven or eight years older then *Bertred* his Wife, I suppose I shall make it appear, that ⁵¹there might be many more years betwixt them, and that from the Argument upon which you your self do reckon, *viz.* The Marriage of *Robert* Earl of *Glocester*, with *Mabill* Daughter and Heir of *Robert Fitz-Haimon*. For whether the said *Robert* Earl of *Glocester*, according to *Selden*, married the said *Mabill* in the year 1109. or according to *Stow* in the year 1110. The said *Mabill* might possibly have *Maud*, her second Daughter in the year 1112. Which *Maud*, if she was married in the year 1128. when she was Sixteen years of Age to Earl *Randle de Gernoniis*, might have her Son *Hugh Cyveliok* in the year 1129. Which if true, the said Earl *Hugh* was Fifty two years of age at his death, for he died in the year 1181. And if so, then he was four years above twice the age of *Bertred*; for she was aged but Twenty four years when the said Earl *Hugh* died, as appears *Rot. de*

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Dominabus pueris, &c. In Scacc. penes Remem. R. sub Tit. Linc. Rot. 1. And it is certain, That the said Earl *Hugh* was Earl of *Chester* about four years before his Wife *Bertred* was born, besides what age he was of, when his Father died : But I may very well abate ⁵²you several years of this accompt, and yet Earl *Hugh* be a great deal older then his Wife *Bertred*.

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And as to the Third and fourth Reasons, they were onely urged as concurrent Proof, with the Argument brought from the words *In libero Maritagio*, yet I conceive there are many more circumstances than you take notice of : And therefore when I have observed them all, *viz.* That in the first Deed, *Hugh Cyveliok's* Countess is a *Witness*, by which the said Earl gives Services to the said *Amicia* in Free-marriage, and calls her his Daughter : And in the Second, That *Ralph Mainwarings* Daughter is also called *Bertred* after the Countess, and *Randle* Earl of *Chester*, a *Witness* to what was given with her in Free-marriage to *Henry de Alditeleghe*, who was Great Grand-father to the Famous *James Audley* that warred in *France*. And in the third, How *Roger Mainwaring* in his Gift to the Monks of *Deulacres*, calls *Randle* Earl of *Chester* and *Lincoln* his Uncle ; and how, as appears in Mr. *Dugdale's Antiquities of Warwickshire*, pag. 88. *Ralph Mainwaring* was with the said Earl at *Coventry*, and a ⁵³*Witness* to his Charter to his Burgeesses there ; as also, how *Roger de Meinwarin* and *Henry de Aldithele*, who married his Sister, *Monast. Angl. Part 1. pag. 891.* are *Witnesses* to the Deed of *Randle* Earl of *Chester* and *Lincoln*, concerning his Abbey of *Deulacres* ; as also, how the said *Henry de Audley*, *Monastic. Angl. Part 2. pag. 509.* was a *Witness* to the Deed of *Robert de Ferraris*, whose Mother was one of the Sisters and Coheirs to the afore-said Earl *Randle* ; as also, how *Raph Menilwaringe* or *Mainwaring*, as appears by your Book, *Part 2. pag. 130. 131. 139. 143. and 144.* is a *Witness* to one Deed of *Hugh Cyvelioks*, and to three other Deeds of the said Earl *Randle*, (who in some of them is also stiled Duke of *Britain*, and Earl of *Richmond*) I shall leave it (without any more words) to the Reader to judge,

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whether these Circumstances be not such as do shew more great and constant intimacy betwixt the said Two Families, then probably would have been, if *Amice* had been a Bastard; and if so, they strongly concur to prove her Legitimate, which is all the use that is made of those Arguments.

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⁵⁴And although you Object, That you frequently find in *Histories* and *Records*, that *Bastards* are called Cofin, Brother, Uncle, Son, and Daughter. I grant it to be true, yet that is either done where the persons came to be very great, as *Robert* Earl of *Glocester* did, or else, are called so by those that write the Histories of them, or else are so termed by their Relations, who out of their Humility did condescend so to stile them upon ordinary occasions, though it were not their due. But I believe you can hardly find one that you can certainly prove to be a *Bastard*, or the Son of a *Bastard*, who doth presume in a *Deed* to call so great a person, as the Earl of *Chester* was, his Brother, or Uncle, unless he came to be a very great person himself.

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Also I do verily believe, that *Richard Bacun's* Mother was not a Base Daughter of *Hugh Cyvelioke*, nor any Daughter of his at all, because, as you may see *Monast. Angl. Part 2. pag. 267.* When *Richard Bacun* did found the Priory of *Roucester* in *Staffordshire*, his Uncle *Randle* Earl of *Chester* was then living, and a *William* was then Archbishop of *York*, ⁵⁵and one whose name did begin with *R.* was then Bishop of *Chester*; but if the Catalogue of Archbishops and Bishops at the end of *Isaackson's* Chronology be right, there was no *William* Archbishop of *York*, during the life of *Randle Blundevile*; nor any Man Bishop of *Chester*, whose Christian name began with *R.* except *Richard Peche*, who died in the year 1182. At which time *Randle Blundevile* could not be of age to Seal any kind of Deed, because *Bertred*, the said *Randle's* Mother, was then but about Twenty five years of age. I rather think that *Bacun's* Uncle, mentioned *Monastic. Angl. Part 2. pag. 267.* was *Randle de Gernoniis*; for he was Earl from the year 1128. to about the year 1152. And in the year 1143, as *Isaackson* says, *William* Sifers Son to King

Stephen, was Archbishop of *York*, but was ousted of it again, till about 1152. or 1153. And *Roger Clinton* from the year 1128. until the year 1149. was Bishop of *Leichfield* and *Coventry*; which Bishop in elder ages, was the same with the Bishop of *Chester*. But that *Randle* Earl of *Chester*, who is mentioned *Monast. Angl. Part 2. pag. 268.* was indeed ⁵⁶*Randle Blundevile*, who was Earl from about the year 1180. till about the year 1232. (*Roger Constable* of *Chester*, who lived in the time of no other Earl *Randle*, being a Witness to the said Deed) But what the said *Randle Blundevile* did, was but by way of Confirmation, which in former times was very usual to be obtained from Princes several Generations after; as to instance in one Case, instead of many. If you read *Monastic. Angl. Part 2. pag. 24 & 25.* you will find King *Henry* the First, Reciting and Confirming what had been given to the Priory of *Huntendune*, and *Pag. 27.* you may find King *Henry* the Third doing the like; and yet there was a greater space betwixt King *Henry* the First, and King *Henry* the Third, than there was betwixt *Randle de Gernoniis* and *Randle Blundevile*. So that you may see, such great persons as these may have some Children which our Historians take no notice of: And you may also discover upon what slender Grounds you have charged *Richard Bacon's* Mother with Bastardy, she being so far from being a Base Daughter to *Hugh Cyveliok*, that she was no Daughter of his at all; but ⁵⁷she was Sister to *Randle de Gernoniis*, and Daughter to *Randle Meschines*.

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But I shall now come to Answer the Reasons that you bring to prove, That *Amice* was a Bastard. And your first is this.

If Hugh Cyveliok had no other Wife but Bertred, then Amice must be certainly a Bastard; for she was not a Daughter by Bertred as is granted on all sides: But Hugh Cyveliok never had any other Wife but Bertred. Ergo, Amice was a Bastard. And you say the Minor is to be proved by the Affirmer; For, Op. tet Affir- mantem probare.

To this I say,

First, That by this Rule you your self are as much bound to prove her a Bastard, as I am bound to prove that *Hugh Cyvelioke* had a former Wife; for you as clearly affirm that, as I affirm the other; and there is no reason why Suppositions should pass for Proofs any more in your Case, then they should do in mine.

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Secondly, That less Proof by many degrees will serve to prove a thing that ⁵⁸was done long since, then will be required to prove that which was done lately. To instance in one Case, which may serve instead of many: If you be to prove a Deed that was lately Sealed, it will be expected you produce the Witnesses who were present at the Sealing and Delivery thereof. If your Deed was sealed a good while ago, the proving of the Hands will be required: But if the Deed be so old, that none alive could know the Hand-writing of the Witnesses, then the Deed carries its own Proof with it: And the like reason there is in all Cases of Antiquity, and especially in those that are so very ancient as this is. For, if I did onely prove her called a Daughter, being it is so long since, she ought to be presumed Legitimate, unless the contrary do appear. For the proving she was not by *Bertred*, does not prove that she was a Bastard; but onely proves that she was either a Bastard, or else by a former Wife: And our Law at this day is, That a Bastard cannot be proved a Bastard but in his life time; and so it anciently was also, as appears by the old Treatise called *Fleta, lib. 6. cap. 39. sect. 14.* ⁵⁹where it is thus said, *Si autem post mortem alicujus opponatur Bastardia, non allocabitur; cum defunctus ad talem exceptionem respondere non poterit.* Now, if a Person cannot be proved a Bastard immediately after his death, because he cannot answer for himself, What reason is there to charge *Amice* with Bastardy so many hundred years after her decease.

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Thirdly, I do conceive that the Passing of Services *In libero Maritagio* with *Amice*, doth absolutely prove that she was a lawful Child, and by consequence by a former Wife: Also, if you take notice of what *Sir Henry Spelman* writes in his *Glof-*

fary, on the word *Bastardus*, you will find him quoting *Conſtum. du Normand. Artic. 77. in Annot. thus, Quoties enim agitur de honore vel commodo Filiorum, appellatione Filiorum non comprehenduntur Bastardi*. I ſuppoſe therefore in this Caſe, *Amice* would not have been ſtilled as ſhe is in the ſaid Deed, unleſs ſhe had been a Legitimate Daughter.

Fourthly, If this Argument of yours would hold as you have framed it, we ſhould have almoſt nothing but Baſtards ⁶⁰in the Ancient times : For if all muſt be Baſtards, if we could not tell who their Mothers were, nor directly prove their Fathers married, we might then conclude, moſt perſons to be Baſtards that lived in the Firſt and ſecond Centuries after the Conqueſt. I ſhall not offer to put the Caſe upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I miſtake not, I find Eight perſons whoſe Wives we are altogether ignorant of, and Six of thoſe perſons left Iſſue, all which Iſſue, by your Argument would be Baſtards ; which I am confident you cannot, nor will not ſuppoſe. I ſhall inſtance onely in one, *viz. Roger Melinguarin* who in the Reign of King *Henry* the Firſt, as you may ſee in the Firſt Part of *Monaftericon Anglicanum*, p. 985. gave *Plumley* (a place in *Cheshire*, near to *Peover*) to the Abbey of *S. Werburge* at *Cheſter* ; and as it appears by the ſaid Record ; the ſaid *Roger Mainwaring* had Three Sons, *William*, *Randle*, and *Wido*. Now if you ſhould affirm, That the ſaid *William Randle* and *Wido*, were Legitimate, which I verily believe you will not ſcruple to do, I could thus frame ⁶¹your own Argument againſt you.

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If Roger Melinguarin had no Wife, then, William, Randle, and Wido, Sons of the ſaid Roger were certainly Baſtards : But Roger Melinguarin aforeſaid had no Wife. Ergo, &c.

Now if this Argument would hold againſt *Amicia*, it would alſo hold againſt theſe three Children of *Roger Mainwaring*, and indeed againſt all other perſons whoſe Fathers we could not directly and *in terminis* prove to have been married (the Proof lying on the Affirmers ſide) the Abſurdity of which is ſo great,

that you your self cry, *God forbid all Children should be concluded Bastards, whose Mothers cannot be proved.*

But if it be possible for a Man to have one Wife, and we not know who she was, Why may not a Man have two Wives, & we be ignorant who the former Wife was.

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Yea, but (say you) in this Case we find a Wife certainly Recorded, and a Son and Four Daughters, who were afterwards Coheirs, and carried away all Earl Hugh's Lands, clearly proved by Records and Ancient Historians; and also Earl Hugh is certainly known to have many Bastards, which gives occasion of strong suspicion that ⁶²Amice was a Bastard; and therefore here is a necessity of proving a former Wife, which you firmly believe Earl Hugh never had.

For answer hereunto, I say that I do believe if *Randle Blundevile* had left any Issue Male, you had not met with such Proof of the Four Sisters his Coheirs, as you now do: For, the falling of that great Estate to them, they being of the whole Blood to their Brother, is the occasion of their being Recorded, and so much taken notice of by Historians. And though this Earl *Hugh* their Father had some Issue that was not lawful, (as many of the great persons of that age had,) yet that hinders not but he might have two Wives; neither had he so many Bastards as you lay upon him, for, I have shewed before, That *Richard Bacon's* Mother was not any Child of his: And I do conceive I have by necessary consequence proved, That the said Earl *Hugh* had a Wife, who was Mother to *Amicia*, though we cannot tell who she was. And it is no great wonder, if the old Historians do not mention who *Hugh Cyvelioke's* first Wife was, for, there is not any of the Antient Writers that I ⁶³know of, who doth make it his business to tell what Wives and Children this Earl *Hugh* had; nay, I think there is no Antient Historian that doth mention his Wife *Bertred*: And therefore, we had never known who she had been, but onely because she survived her Husband, and was mentioned in the *Inquisition* taken after his death, and because her Daughters after the death of their Brother came to be Heirs.

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Also, it is very hard to tell who were Wives to *Walter Gifford*, the First Earl of *Buckingham*; *John of Henault*, Earl of *Cambridge*; *Baldwin de Ripariis*, Earl of *Devonshire*; *William Fitz-Piers*, Earl of *Effex*; *Robert de Ferrars*, the First Earl of *Ferrars*, (and as some say of *Derby*) *Robert de Ferrars*, Second Earl of *Ferrars*; *Ralph de Maunt*, Earl of *Hereford*; *William de Iper*, Earl of *Kent*; *William de Romara*, Earl of *Lincoln*; *Morchar*, Earl of *Northumberland*; *Gospatrick*, Earl of *Northumberland*; *Robert Mowbray*, Earl of *Northumberland*, and several others; and therefore, what great wonder would it be for *Hugh Cyvelioek* to have a former Wife, and yet we to be ignorant who that former Wife was.

⁶⁴Your second Reason against *Amicia* will not hold, For though what is given in Frank-marriage, be given in consideration of Marriage, yet it cannot properly be called a *Portion*. For, such Gifts may be made either before Marriage, at Marriage, or after Marriage, as you may see *Coke on Littl.* 21. b. And besides, what is given as a Portion remaineth to the Husband for ever, and is wholly at his disposal; but Lands given in Frank-marriage, shall after the death of the Husband and Wife (if they die without Issue) revert to the Donor: Also any person that pleaseth may give a Woman a Portion, but none but one of the *whole Blood* can give Lands with a Woman in Frank-marriage, as Mr. *Hughes* says in his *Grand Abridgment of the Law*, pag. 970.

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But the reason why you call it a *Portion*, is, Because you would have it thought that this was all her Portion, and thence would infer, that she was Illegitimate, because so very little was given with her: But I think any Man that will weigh things indifferently will easily conclude, That if she had been but a Bastard, yet being a Bastard of so great a person, ⁶⁵she would have had a great deal more given her than these Services, upon those terms that they were given, and especially considering how you have observed out of Sir *Henry Spelman*, that Bastards were not in such disrepute in those former ages, as they are now; and besides, I have made it appear, that Sir *Ralph Mainwaring* was

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no inconsiderable person, and therefore would deserve a great deal more. And you may also find in one of the Deeds before-mentioned, that though the said Sir *Ralph* had Issue Male, yet he gave that which was of far greater value in Free-marriage with a Daughter of his own: But I perceive, if this Deed of Earl *Hughes* had been lost, you would not have believed that Sir *Ralph Mainwaring* had had any thing with *Amicia*, because then it would not have appeared, which is a strange way of arguing, about things that were done so long since. And, if this be a good reason, I wonder you do believe that Earl *Hugh* had any Portion with his Countess *Bertred*, because (for ought I yet know) it doth not appear that he had.

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⁶⁶ As for your alleadging how the other Four Sisters were married, I have answered that before; and though you say, That if *Amice* had been Legitimate, she being of the first Venter, would have been more worthy then those of the second, though that be true when the Sisters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Case) if there be Sisters of two Venters, and the Brother be of the second Venter, then the Sisters that are of the second Venter shall be preferred before those of the first Venter, because those of the second Venter are of the whole Blood. I shall therefore here conclude what I have to say to your second Reason, when I have told you that I do not understand why you call this Gift of Earl *Hughes* (as you do in several places) *A Release of the Service of one Knight's Fee*.

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Your third and last Reason, I conceive hath no weight at all; For those Historians and others which you speak of there, do not take upon them to give an account of all the Children of *Hugh Cyvelioke*, but onely to tell who were ⁶⁷the Heirs of *Randle Blundevill*; and of this you are so sensible, That you confess this Argument not to be evincing, and yet it is as strong as your first Reason. But I cannot but wonder when you name Mr. *Cambden* to be one of those that take no notice of *Amicia*, being you well know that he hath mentioned her in his *Britannia*, in his De-

scription of the County of *Chester*; and though not as a Coheir to her Brother *Randle*, (for that she was not) yet without the least brand of being a Bastard: Also all those Judges and Herald, of whom you have formerly heard, and all other persons (except your self) which have seen my Deeds, have from the Expressions therein, been fully convinced, that she must needs be Legitimate; and amongst others, that worthy and judicious person, *William Dugdale* Esquire, our *Norroy*, King of Arms, is of the same judgment, as will appear in his *Historical Discourse of the Baronage of England* (which will be shortly ready for the Press.) In which, from the Authorities and Reasons there briefly cited, he concludes, That *Bertred* was a second Wife, and that *Amicia* was a Lawful Daughter ⁶⁸of the said Earl *Hugh* by a former Wife, though it be not known who that Wife was, and which is worthy observation, the said Mr. *Dugdale* hath heard you alleadge your Reasons to the contrary, but did not find them such as to be satisfactory to him: I hope therefore that I shall not because of my Relation to that Noble Lady, be thought to be Partial or Singular herein, since that it appears she stands vindicated by the Sentence of so many knowing and unconcerned persons; but it will necessarily follow, that you have dealt very severely with your said Grand-mother, and that upon such weak Grounds, as your *Three Pretended Reasons*, which will not prove her to be a Bastard, if those Arguments that were brought on her behalf, were all laid aside.

[Page 68.]

I have now answered the Objections which you have brought against *Amicia*, the Wife of Sir *Ralph Mainwaring*; but before I conclude, I shall acquaint you, and the Reader, with two Deeds; the first whereof, doth belong to *Thomas Ravenscroft* of *Bretton*, in the County of *Flint*, Esquire; and the other to *Henry* ⁶⁹*Mainwaring* of *Kermincham* in *Cheeshire*, Esquire, the words whereof do here follow, as they were copied out several years since from the Originals by *William Dugdale* Esquire.

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SCiant præsentēs & futuri quod ego Alanus de Boidele dedi & quiet' clam' fratri meo Willielmo de Boidele & hæred' suis Docclifon in feod' & dominicis cum omnibus pertin' infra Limam. Tenend' & habend' de Domino meo Raul' Com' Cestr' & hæred' suis faciend' servicium de prædict' terr' sc. De quatuor feod' & dimid' prænominato domino meo Raul' Com' Cestr. & hæred' suis. Et ego vero Alanus de Boidele & hæred' mei prædict. terr. cum omnibus pertin' prænominato Willielmo de Boidele & hæred' suis contra omnes homines & feminas cum pertin' warantifab. Et quia volo quod hec mea donatio & quiet' clam' stabilis & inconcussa & rat' permaneat præsentī scripto sigillum meum apposui. His test' Domino Raul' Comite Cestr' domino Rad' de Mainwaringhe tunc Justiciar' Cestr' domino Roberto de Monte alto, Domino Hug' Dispensar' Domino Ham' Sen' de Mascy, Domino Warino de Vernun, Domino Willielmo de Venables. Toma fil' ⁷⁰ Willielmi de Goulborn, Petro de Beking. Rob' tunc persona Gropenhale scriptor' hujus scripti & multis aliis.

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SCiant & omnes præsentēs quam futuri quod ego Robertus dominus Moaldie & senescallus Cestrie, concessi & præsentī Karta confirmavi domui sce' Werburge Virginis in Cestria & Monachis ibidem Deo servientibus totam Villam de Goostree plene & integre cum omnibus pertin' suis in puram & perpetuam elemosynam pro salute anime mee & animarum prædecessorum meorum, liberam quietam & solutam ab omni seculari servicio & omni seculari exactione. Ita quod in eadem Villa de Goostree nihil ad opus meum vel hæredum meorum retinui præter elemosynam & orationes & tantam libertatem in ipsa eadem Villa prædictæ domui & prædictis Monachis concessi quod in posterum nullus hæredum meorum quicquid libertatis superaddere possit. Et ut hec mea concessio rata & inconcussa permaneat imperpetuum eam sigilli mei appositione roboravi. Hiis testibus Rad' de Menikwar' tunc Justiciar' Ham' de Masci Gwar de Vern' Rad' fil' Sim' Pho' de Orreby. Sim' de Thuschet' Rog' de Menikwar' Willielmo de Venables. Toma Dispensatore ⁷¹ Rob' fil' Picot' Petro Clerico Com' Ricardo de Vern'

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Rob' de Menilwar' Brito Paulum Patr' de Moberl' Liulf' de Twamlow. Peers de Surtm' Ran' de Praerf' Ricardo de Kingsl' Fo' de sancta Maria, & multis aliis.

I fhall alfo defire you to take notice of what you your felf have obferved in your *Historical Antiquities*, pag. 160. how that Earl *Randle de Gernoniis* (as doth appear by the Charter there mentioned) did give the Office of *Conftable* of *Chefhire*, in Fee to *Eufpace*, Baron of *Halton*, and his Heirs; and did conftitute the faid *Eufpace* (to ufe the words of the faid Charter) *Hæreditarie Conftabularium & supremum conciliarium poft me & fuper omnes optimates & Barones totius terræ meæ*. As alfo Pag. 161. how the Baron *de Montealto* or *Moald*, being *Dapifer*, *Senefchal*, or *Steward* of *Chefhire* in Fee, had the fecond place, which is alfo confirmed by feveral Deeds mentioned by you, Pag. 129. 130. 139. 144. and 162. In all which, the *Conftable* and *Steward* are named before the Juftice of *Chefter*, and all the other Barons; which being ⁷²fo, it will be difficult to give a Reafon (if *Amicia* was but a Bafe Daughter) why Sir *Ralph Mainwaring*, in the Deed abovesaid of *Alan de Boiddele*, is named as a Witnefs next to the Earl of *Chefter*, and before Sir *Robert de Monte alto* or *Moald*, *Steward* of *Chefhire*, and fo many of the other Barons; as alfo in a Deed mentioned in your Book, Pag. 139. why the faid *Ralph Mainwaring* is named next to the Countefs of *Chefter*, and before *Roger*, *Conftable* of *Chefhire*; as alfo, why in a Deed in the 143 Page of your Book, the faid *Ralph Mainwaring* is again named next to the faid Countefs, and before *Ralph*, the *Steward* of *Chefhire*.

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But if *Amicia* was a Legitimate Daughter, the reafon thereof will be apparent: For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Chefter*, being a Count *Palatine*, and one that is confeffed by you, Page 152 & 159. to have Royal Authority within himfelf, and not unfity to be ftiled a *Petty King*, having under him his *Conftable* of *Chefhire* in Fee, in imi-⁷³tation of the Lord High

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Constable of *England*, and his Steward of *Cheeshire* in *Fee*, after the example of the Lord High Steward of *England*, and his Noblemen about him, in imitation of the Barons of the Kingdom; as also his Chamberlaine, who supplieth the place of Chancellor, and his Justices of *Chester*, (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*,) as also a Baron of the *Exchequer*, a Sheriff, and other Officers proportionable to those of the Crown: It is no wonder at all, if these great persons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of their said Earls.

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Add hereunto, that when Earl *Hugh Cyvelioke*, did by his Charter mentioned by you, *Page* 131. acquit the Abbot and Monks of *Stanlaw*, of some Toll in *Chester*, (which could be but a little before the said Earl's death, because, the said Earl died in the year 1181. And the Abbey of *Stanlaw*, as is confessed by you, *Page* 267. was Founded but in the year 1178.) The said Earl in ⁷⁴his said Charter (contrary to all former Precedents which I have seen) doth name the Justice of *Chester* before both the Constable of *Cheeshire*, and Steward of *Cheeshire*; and the Reason thereof I suppose to be, because the said *Ralph Mainwaring*, who was Son in Law to the said Earl, was then Justice of *Chester*, as he also was, some years in the life time of *Randle Blundevill*; though the said *Ralph*, as appears, by his aforesaid Deed made to *Henry de Alditeleghe*, did afterwards part with the said Office, *Philip de Orreby* being Justice of *Chester*, when the said *Philip* was a Witness to the said Deed.

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Now this preeminence could not be given to the said *Ralph*, because he was Justice of *Chester*, (that being below the Offices of Constable and Steward, as appears before) but because of the Relation of the said *Ralph*, to the said Earl: But as this respect was too great to have been shewed him, if he had onely married one that was a Bastard, so it doth not consist with your conceits, that the said *Amice* was Illegitimate, and that the said *Ralph* had nothing else with her, but the aforesaid Services: ⁷⁵For in-

deed they were not of sufficient value to be a Portion suitable to the Estate of a very mean Gentleman.

I Have at present done with this Discourse, concerning the afore-said *Amicia*, but being desirous to rectifie all Mistakes which do concern my Family, in all the Particulars that I can, I think it not inconvenient to inform the Reader of one of yours, in the 334 Page of your Book, wherein, speaking of *Margery* the Wife of *Randle Mainwaring*, you say,

This Randle Mainwaring of Over Peover, stiled commonly Honkyn Mainwaring in the Language of those times, died 35 H. 6. 1456. Lib. B. page 21. E. Buried at Over Peover in the Stone Chappel on the South-side of the Church: Which Chappel Margery his Wife surviveing, erected, with the two Monuments therein for her self and husband, Anno Dom. 1456.

For albeit it be very true, that the said *Randle Mainwaring* did marry *Margery*, the Daughter of *Hugh Venables*, Baron of *Kinderton*, and Widow of *Richard Bulkeley* of *Chedle* in *Cheeshire*, yet ⁷⁶the said *Margery* did not survive the said *Randle*, and after his death, Erect the said Chappel and Monuments therein: For although on the Eighth day of *August*, in the Year of Our Lord God, One thousand six hundred and forty, the Pictures of the said *Randle Mainwaring* and *Margery* were tricked out by a very good hand, as they were then remaining in a Glass Window of the said Chappel, Kneeling, with this Inscription, viz.

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*Orate pro animabus Ranulphi Maynwaryng & Margerie
Uxoris ejus qui istam Capellam, Anno Dom. M^o cccvj. . .*

And although the Year when the said Chappel was built, is still to be seen in the said Window, yet that doth not prove, that the said *Margery* survived her Husband *Randle*, and erected the said Chappel and Monuments: For, the word *qui* cannot possibly relate to *Margery* alone, but doth, as I conceive (in the true

[Page 77.]

meaning thereof) relate onely to the said *Randle*: For it appears by an Inquisition taken after the Death of the said *Margery*, that the said *Margery* ⁷⁷held in Dower, at the time of her Death (*Ex dotatione Richardi Bulkeley quondam viri sui*) the third part of the Moity of the Mannor of *Chedle*; as also Five Messuages in *Middlewich*; One Messuage and Sixty Acres of Land and Wood in *Newton* near *Middlewich*; Ten Acres of Land in *Ashley* and *Hale*; Eight Acres of Land in *Occleston*; Six Messuages and Two hundred Acres of Land, Meadow, and Wood, in *Wharcroft*; Six Messuages and One hundred and twenty Acres of Land, Meadow, and Wood, in *Holme juxta Davenport*; the Moity of the Scite of one Water-Mill, and Four Acres of Wood in *Little Stanthorne*, and the Moity of the Mannor of *Timperley*: And it is also found by the said Inquisition, that *William de Bulkeley* was the next Heir of the said *Margery*.

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Now this Inquisition being taken in the Twenty seventh year of King *Henry* the Sixth: and the said *Randle Mainwaring*, together with his Three Sons, Sir *John*, *William*, and *Randle*, (for the said *John* was Knighted in the life time of his Father) being all Three mentioned, as then living, in a Deed of mine, dated the Saturday next after the Feast ⁷⁸of Saint *Hillary*, in the Thirtieth year of King *Henry* the Sixth; and I having also in my custody another Deed, dated the Sunday next before the Feast of *Corpus Christi*, in the said Thirtieth year of the said King, made betwixt the said *Randle Mainwaring* the Elder, and Sir *John Mainwaring* Knight, his Son, on the one party, and *John* of *Ashley* of the other party, concerning a Marriage to be had betwixt *Hamnet*, Son and Heir Apparent of the said *John Ashley*, and *Margaret* Daughter of the said Sir *John Mainwaring* (which Deed is also mentioned by you Page 334.) It is from hence very clear, that the said *Margery* did not survive her Husband *Randle Mainwaring*, and erect the said Chappel and Monuments therein, after the said *Randles* death.

There is also omitted by you, in your *Historical Antiquities*, *Agnes* the Daughter of *John Mainwaring* of *Over Peover* Esquire,

who was Sister to Sir *John Mainwaring*, and Wife of Sir *Robert Nedham* Knight: And of this Match, there is very good Proof, (which you have been informed of) I having by me the Pictures of the said Sir *Robert* and ⁷⁹*Dame Agnes*, as they were carefully tricked out the Tenth day of *August*, in the year of our Lord, One thousand six hundred and forty, from a Glafs Window in *Holmes Chappel* in *Cheshire*, where they were then Kneeling, with the Coats of Arms of *Nedham* and *Mainwaring* empaled betwixt them, and Three Sons Kneeling behind the said Sir *Robert*, and Two Daughters Kneeling behind the said *Dame Agnes*, together with this Infcription.

[Page 79.]

*Orate pro bono Statu Roberti Nedam Militis & Agnetis
Uxoris ejus & pro animabus Thomæ, Johannis, & Ro-
berti filiorum & pro bono statu Matildæ & Johannæ filia-
rum ejus Roberti fieri in Anno Domini Mccccxliiij.*

Also, in the Chancel of the Parish Church of *Adderley*, in the County of *Salop*, being the usual Burial place of the *Nedhams* of *Shenton*, in the said County, (which Family of *Nedham*, is now honored with the Title of Viscount *Kilmorey* of the Kingdom of *Ireland*) there do yet remain the Monuments of the said Sir *Robert* and *Dame Agnes*, ⁸⁰there being on a Blewish Marble Stone, the Pictures of the said Sir *Robert Nedham*, and *Dame Agnes*, and Seven Sons, and Two Daughters; as also an Infcription (all of them of Brasse) which Infcription is as followeth.

[Page 80.]

HERE lieth Buried under this Stone the Bodies
of Syr Robert Nedeham Knight, and Dame
Agnes his Wyffe, Daughter of John Maynwaring
of Pever Esquier, which sayd Robert deceased the
iiii daye of June, An. Domini 1556. And the said
Agnes deceased the ii daye of Maye. Anno Domini
1560.

FINIS.

A N
A N S W E R

To the BOOK of

Sir *T H O M A S M A N W A R I N G*

Of *Pever* in *Cheshire* Baronet,

ENTITULED

A Defence of *A M I C I A*

Daughter of *HUGH CYVELIOK*

Earl of *Chester*.

Wherein is Vindicated and Proved, that
the Grounds declared in my former
BOOK, Concerning the Illegitimacy of
A M I C I A, are not Evinc'd by any solid
Answer or Reason to the contrary.

By Sir *P E T E R L E Y C E S T E R*
Baronet.

Anno Dom. 1673.



TO

[Page 1.]

Sir Thomas Manwaringe

Baronet.

SIR,



YOU are pleased to tell me in the Front of the Epistle before your Book, *That it will appear strange to those that know the nearness of Blood betwixt us, that you should appear in Print against me.*

Truly I believe it is only the Zeal of your Opinion, touching the Legitimacy of *Amicia*, which perhaps hath taken but too deep a root within you, that makes you now endeavour to incline the World to ²be of your Opinion; and that the grounds alleadged in my Book (swaying my Reason to the Contrary Opinion) are no just grounds to support it: But though we differ in Opinion, yet we may be loving Friends: for I hope we are *Pii Adversarii*, both Contending for the Truth rather than Victory; And therefore wish that we may be firmly united ¹ as well in the bond of Friendship as Nature; and that as much as ever, without any Animosity at all.

[Page 2.]

And you tell me further, *That if I would have been contented to have delivered what I did conceive concerning Amicia, as an uncertainty only (as I have done that of Roger, Son of the said*

Earl Hugh) I know you would have rested satisfied, without giving me or the Reader the trouble of any one of your Lines.

[Page 3.]

To this I say, I remember well you moved me to have put *Amicia* under the head or notion of the ³doubtfull Issue of *Earl Hugh*; at which time I told you, I must either put her under the Title of Lawful Issue, or Unlawful Issue; for there was no *Medium*: She must certainly be either Lawful, or Unlawful, if any Daughter at all: And I thought it not fit to put down in my Book any third Title of Doubtful Issue: But till now, I never understood you would be content with the words which I put down concerning *Roger* Son of the said *Earl*; for else (if I know my own mind) I should certainly have gratified your desire therein. For in the next Page of my Book, I say, I shall then add the Reasons why I conceive her to be a Bastard; which is the very Expression that I used to the rest.

There are yet two or three things in your Epistle, which in the first place I desire to observe unto you.

[Page 4.]

The first is, *That you say, you very much wonder when I mention* (a) I apprehend not why you call him chief Justice of *Chester*, when in those Ages there was onely one Judge of *Chester* at a time. *Raufe* ⁴*Manwaringe Chief (a) Justice of Chester, and his Son Roger, and William Manwaringe younger Son of the said Roger, that I take not notice that they were all three Knights; because I had seen Proofs thereof by many Deeds, where the word Dominus is prefixed to each of their Names; which was not (that you know of) used to be done to any in those elder Ages, but those that were Knights, Clergy men only excepted.*

But I am very confident, that it was applied also to the better sort of Gentlemen in those Ages, who were no Knights; nor is it a sure Rule to be always understood of a Knight, unless the word *Miles* do follow; and in those elder Ages it was sometimes prefixed, and oftener omitted, even to the same men; as *Domino*

Galfrido de Dutton, who in the Original Chart of *Nether-Tabley* writes himself onely — *Ego Galfridus de Dutton dedi, &c.* and several other Deeds I have seen of the same ⁵Person (who was lineal Ancestor to *Warburton of Arley*) wherein I dare affirm among the Witnessees subscribed, he hath five times and more the word *Dominus* omitted, for once that we find it prefixed to his Name; and am very confident was not in him, as many others also, to be construed any more then Master *Geffrey Dutton*, and that he was no Knight; for when the Party makes a Deed, he will usually use what Title he hath, especially if he be a Knight (for Esquires in those Ages were none, which came not to be added in old Deeds till after the Statute of Additions under *Henry* the fifth, although it was first made a distinct Title under *Richard* the second) he will be loath to loose that Title: whereas Subscription of Witnessees, which are put by the Writer of the Deed, many times have some distinction of the better sort of Gentlemen from the rest by the word *Domino*; which word is never used in old Deeds by the Party himself, but where it is joyned with another ⁶word, as *Ego Willielmus Manwaringe Dominus de Pever*; so also in your Book, *p.* 70. where it is so used — *Ego Robertus Dominus Moaldix*; for *ipsa vox (Dominus) primo de Imperatore, postea de Rege, demum de quovis Territorii Domino enunciata fuit: Spelmani Glossarium, p.* 182. *b.* And in Subscriptions it is very uncertain; sometimes added, and sometimes not added: And so are the placing of the Witnessees in those Subscriptions of elder Ages very uncertain also; for we may observe that the same men, being Witnessees to several Deeds, are many times one put before the other in one Deed, and the same put after the other in another Deed: As to the word *Dominus*, if you please to look back on those your Ancestors mentioned in those Deeds put down in your Book, as *p.* 27. *Radulfus de Meidnilwaringe Omnibus, &c.* you have here no Title used, and yet this was after *Bertrey* his Daughter was marriageable; but you will say, possibly that was before he was Justice of *Chester*, see then *p.* 70. ⁷*Testibus Radulfo de Menilwarin. tunc Justiciario*

[Page 5.]

[Page 6.]

[Page 7.]

Cestrie, &c. without any *Domino* prefixed ; and very many others I have seen also, where he is so Subscribed ; look but into your own Deeds diligently, and tell me if you find not many more Subscriptions mentioning *Roger Manwaringe*, and *William Manwaringe*, without the word *Domino* then with it ; and not any Writing thus, either *Ego Rogerus*, or *Ego Willielmus Manwaringe Miles* ; see also *p.* 69. where most of the Witnessees are put with *Domino* prefixed ; and *p.* 70. the next Deed following, *Raufe Manwaringe* then Justice, *Hamon Mascy*, *Guarin Vernon*, and *William Venables* (who are all Witnessees to the other Deed) are in this put down without *Domino* prefixed ; nor is there any one in this Deed, which hath *Domino* prefixed : So that it is plain it was sometimes added by the Clerks, and sometimes not added at pleasure : and also used to the better sort of Gentlemen who were no Knights, as well as to Knights and Clergymen : And at this day, as the ⁸word [Sir] is in common Discourse applicable to Persons of Quality from the highest to the lowest in it's larger notion, so *Dominus* is applicable to any Knight or Gentleman ; as if I should say, *Domine, quæso, num hoc verum est quod dico, necne ?* but in this thing here spoken of, I remember you did mention it to me ; and I fully intended to have called them all Knights, but I know not by what Fate it was forgotten ; whether by my intentness on more weighty things to amend them before my Book went to the Press, or my Book having been now above a year and a half out of my hands since I sent it away from me, it seems I lost the opportunity and forgot it ; and I had rather give to any, especially to your family, more than is due, then less ; howbeit it is not possible for me to place my words so in every particular, as can give all men content.

[Page 8.]

Again you tell me, *That you might take notice of my mistake in my Book, p. 336. where I blame the Herald who ⁹in Queen Elizabeth's time made for the then Sir Randle Manwaring's Coat, Barry of twelve Peeeces Argent and Gules ; for which I cited Guillim's Heraldry ; but that was the mistake of Guillim, not the Herald ;*

[Page 9.]

for that which the Herald did then allow (which I Blazoned amifs) was *Argent, fix Barrulets Gules* — And the *Manwarings of Pever* (now next heir Male to *Manwaringe of Warmincham*) have a good right to the *fix Barrulets* with which *Sir Roger Manwaringe* did *Scal*, as well as they have to the two *Barres* which *Sir Thomas Manwaringe of Warmincham* did bear.

But here is the Herald's error, that it should be given by him to *Manwaringe of Pever* now in these late Ages as his most proper Coat; whereas ever since the time of the said *Sir Roger Manwaringe*, as well the Heirs of the right Line, as also the *Manwarings of Pever* (after they became next Heir-Male) have constantly born the two *Barres* for some ¹⁰hundreds of years without alteration successively, and not the *fix Barrulets* at all till this Change of the Herald in *Queen Elizabeth's* time: why now, though the Posterity of *Sir Roger* might have continued the right of *fix Barrulets*, yet they changed the same to two *Barres* which after so many Ages hath now gained an Hereditary right; for at first Coats were assumed at Pleasure; but from *Henry the Third's* time downward Arms began to be made Hereditary; and most Gentlemen from that time downwards did bear the Coat of their Ancestors, as it were hereditarily; and here is the Absurdity, that the Herald alters the Coat again to *fix Barrulets*, after so many Ages past, when the two *Barres* had been so long retained as an Hereditary right; for let any man but imagine what confusion Changes would make, in case every Son should vary from his Father by bearing a distinct Coat, and stick to no certainty: wherefore it seems absurd, and I know not whether it may destroy a right already ¹¹gained in this Case; for it is usage onely that makes a right herein, as you may see in the great Suit between *Scroop* and *Grosvenour*, in the Marshall's Court under *Richard the Second*, concerning the bearing of a Coat of Armes, whereto both challenged a right and Property by Usage, but no other way.

[Page 10.]

[Page 11.]

And thirdly you tell me, *That you suspect I have branded several Persons in my Book with Bastardy, without direct Proof thereof; and although you concern not your self for any, but some of those by me mentioned, when I write of the base Issue of Hugh Cyveliok; yet if you make it appear that I have there without any certainty aspersed two other Ladies besides Amicia, you hope I shall have no just Cause to blame you.*

[Page 12.]

Truly I shall not, For those you hint upon, but name not, I can make no answer to take off your suspicion, till I know who they be; but the other two Ladies besides *Ami-¹²cia*, I conceive you mean *Geva* Daughter of *Hugh Lupus*, and the Wife of *Bacun* Daughter of *Hugh Cyveliok*; which two you bring in upon the account of *Amicia*: for those being proved Bastards, will be a great blow to *Amicia*; and had not the Case of *Amicia* been concerned, I believe these two had never been spoken of by you, nor suspected nor doubted of: But if I do make good what I have Alledged, I hope then you will recant for branding me with an Aspersion; which I think I shall do, with as much certainty as the nature of the thing and times will admit.

So much touching your Epistle: and now I proceed to the rest of your Book.

[Page 13.]

¹³Page 21, 22.

WHere in the first place you wonder, *That I should so peremptorily call Amice a base Daughter of Hugh Cyveliok, unless I had more sure grounds to go upon; and though it be your Taske onely to defend Amicia, yet you suppose you shall make it appear before you have done, that I go on no absolute certainty, in calling Bacun's Wife, Mother of Richard Bacun Founder of Roucester-Priory, another base Daughter of Hugh Cyveliok, or in calling Geva a base Daughter of Hugh Lupus: and then you*

would remind me of what I have been formerly told, that those Heralds that gave Manwaringe of Pever the Quartering of the Earl of Chester's Coat in Queen Elizabeth's time, were Mr. Cambden, and Mr. Erdefwick, Persons that you do not know why I should so much mislike their boldness and ignorance (as I call it) for their so doing.

¹⁴Whereunto I say, My grounds are certain enough to prove them all three Bastards, and such as yet is not refelled by you, by any substantial Answer to the contrary, and I believe in the Loose it will so appear; as to the Heralds you mention, you say you would remind me that you had formerly told me of them; but you never told me till long time after that part of my Book was written; what then? Mr. *Cambden* I hold a most Learned man, and one of the best Antiquaries of our Nation in this last Age; but yet for doing this thing, whether *Cambden* himself, or who ever else, I say he was overbold in it, and it is erroneous; for though in the Age of *Henry* the Second Quartering of Coats was not in use, yet about the Reign of *Henry* the Fourth, every Gentleman began to Quarter the Coat of the chief Heir with whom his Progenitor had matched; and after *Edward* the Fourth's time, marshalling of many Coats together came into use, and this was to shew their right; so saith *Cambden*¹⁵ himself in his Remains, p. 225. of the Edition thereof put out by *Philpot*. Now between the Age of *Henry* the Fourth and Queen *Elizabeth* had elapsed above 150. years, time enough to have taken notice of such a Quartering, if it had been right and due; but you ingeniously confesse in the place cited, that perhaps in strictness it may be true, that it doth only belong to those of the Whole-blood to Quarter Coats, and that to shew their rights; yet it being now a common practice for those of the Half blood to do it, you know not why it should be accounted a crime in your Family more then in others in the like Case: True, it is as lawful in your Case as any other, if your Case be the same with others: I say, the Quartering of the Coat of a Coheir ought not

[Page 14.]

[Page 15.]

[Page 16.] to be given by any Herald to any, but the Coheir of the Whole-blood ; which in strictness, you do confess : Is not that Herald then to be disliked, both for his boldness and error, who shall at any time give it to the Half-blood ? but in this Case ¹⁶I believe it will not appear to be given to the Half-blood, as you call it ; unless it be meant of a Half-blood illegitimate.

Page 23.

You say, *Because Manwaringe was not an equal Competitor to the Coheir of the Earl of Chester, could be no substantial Argument to prove Amicia Illegitimate ; and so you pass to illustrate your Ancestour to have been seized of a good Estate of Lands.*

[Page 17.] Whereunto I say, I do not urge that for an Argument of her Illegitimacy, we shall come to that anon. I only there observed chiefly, that she was no Coheir, which you grant ; and therefore the Herald ought not to have given to *Manwaringe* the Quartering of the Earl of *Chester's* Coat at all ; which you do grant to be in strictness true, and which I have touched immediately before ; and I shall likewise grant your Family to be a Family of good Quality, both ¹⁷at that time, and at this present also ; I should be loth to say to the contrary : but as to your note of Dukes and Earls to have been anciently Judges of *Chester*, you should have distinguished of the times ; for that was not till the Reign of *Richard* the Second (who made Deputies to act in their stead) before which time you find no such great Persons Judges there ; nor from *Henry* the Seaventh's time downwards.

Thirdly, Page 24.

You say, *The case was not the same with the other Daughters of the Earl of Chester, when Rafe Manwaringe married Amicia, as it was afterward ; for Amicia was married in the life time of her Father Earl Hugh ; whereas those four came to be such great for-*

tunes upon the death of their Brother Randle Earl of Chester and Lincolne without Issue, to whom they then became Heirs, they being his Sisters of the Whole-blood; and though all or most of them were married before they ¹⁸ became to be his Heirs, yet the said Earl Randle having never had Issue, the expectation of that Estate added to their other Fortunes, must needs make them very considerable Fortunes; whereas Amicia was but of the Half-blood, being a Daughter of Earl Hugh by a former Wife. [Page 18.]

My Answer.

Herein first you beg the Question, which was never granted, nor can ever be proved, That *Amicia* was of the Half-legitimate Blood to Earl *Randle* by a former Wife of Earl *Hugh*: but *dato hoc, sed non concessio*: It is more rational to imagine, that Earl *Hugh* matching his only Daughter by a former Wife (as you suppose) in his life-time, would have married her to as considerable a Person, as was either provided by himself, or his Son, for his younger Children by a second venter, whose expectation (which you conceive added to their Fortunes, whereby they matched to so great Persons) could ¹⁹ not be much, being grounded upon great uncertainties, since it could not be foreseen (when they married) that their Brother should dye without Issue, who afterwards married two Wives successively, purposely to have Issue of his own Body to inherit his own Lands. [Page 19.]

Page 25.

You say, *That I acknowledge I have been informed that three eminent Judges, and four Heralds, are of Opinion that Amice was Legitimate; and was also told lately by one, whom you hope I have no reason to discredit, that since then several other Judges and Heralds have been consulted; all which did concur in the same Opinion, that Amicia was no Bastard.*

My Answer.

[Page 20.] Whereunto I answer and confels, I was so informed ; but it was you your self who informed me ; nor did I ever yet see any Opinion under ²⁰their hands, nor their grounds and reasons for such their Opinions attested : what can be made of this ? Let the ingenious Reader judge of the Argument : some Judges and Heralds are of that Opinion, *Ergo* she was Legitimate. In these Cafes all that can be said *Pro* and *Con* should have been put indifferently on both sides, when any grave Person is to be consulted ; which hitherto hath been done privately on the one side only, without hearing the Reasons on the other side ; and you know how Opinions are not rarely given according to the putting of the Case, but very frequent and usual ; when many times even the Lawyers themselves differ in their Opinions : But I can compare this to be like nothing more then going about to get hands to a Petition or Certificate. It is not Opinions that ought to sway the Judgment of all indifferent Readers, but solid Reason. And I shall desire to be Confuted with substantial Arguments, not Opinions of this or that man.

[Page 21.] ²¹And now I come to your Reply against my Answers given to the Arguments for *Amicia*, which I shall fully comprehend in short, that the Reader may with less trouble better apprehend the Point.

Page 30, 31.

Where you say, *That my Answer is, that it is true, the Law is so taken at this day ; i.e. that Lands cannot pass in libero maritaggio with a Bastard ; but I doubt whether it was so taken in the elder Ages of Henry the Second, and upwards : and also that I cite Glanvil Chief Justice of England, who lived in the time when Amicia lived : and that I do also shew you a Precedent, where Lands were given by the Father in free Marriage with his base*

Daughter: and I say further, that the Common Law in sundry other things is at this day altered from what it was in former Ages, long after the time of Henry the Second; for which I cite
²²*Cooke upon Littleton in several places: These are my words.*

[Page 22.]

Your Reply, *Pag.* 30, 31.

Hereunto you reply to what I urge out of the Lord Cooke; *That you conceive the Common Law, where not altered by Parliament, is the same at this day that it was formerly: and you cite Cooke upon Littleton, p. 115. b. (which should have been fol. 115. b.) who faith, It is a Maxime of the Law, That whatsoever was at the Common Law, and is not ousted or taken away by any Statute, remaineth still; and so consequently you argue, that if it ever were the Common Law, that Lands or Services might pass in libero maritagio with a Bastard, or one that is not of the Bloud, it would be lawful to do so still; because that part of the Law is not ousted or taken away by any Statute: — So that the places which I have cited, do not prove, That the Common Law at this day doth vary from what it was in former Ages in any particular; but only that it was taken to*²³*be otherwise in those dayes: just like some Cases in our Reports, which at several times have been adjudged directly contrary to each other; but notwithstanding the Law was still the same.*

[Page 23.]

My Answer.

To this I Answer; First, To the Maxime of Law, wherein it is said, *that whatsoever is not ousted or taken away by any Statute, remaineth still;* wherein the word *Ousted* must needs be understood disjunctively, or conjunctively: if disjunctively, then the words (*not ousted*) must be understood of some other way than by Statute; and then it is as much as to say, *not altered:* and so implies a common practice of the Law, in such cases, contrary to what it was formerly. If it be understood conjunc-

[Page 24.]

tively, then the words must needs bear this sense; that the Law is the same still in all points as it was before, except where taken away by Statute: And thus understood, I shall produce you *Cooke* against *Cooke*, in his Book ²⁴upon *Littleton*, fol. 34. §. 39. His words are these—*In ancient time it appeareth by Glanvil, l. 6. c. 1. it was taken* (that is, the Law was taken) *that a man could not have endowed his wife ad ostium Ecclesiæ of more than a third part; but of less he might: but at this day the Law is taken as Littleton there holdeth; which is, that a man may endow his wife ad ostium Ecclesiæ of his whole Land, or of the half, or other less part.* So that here we see the Law in this case is altered, and without any Statute; *ergo* the Law is altered without any Statute. Also *Ibid.* fol. 8. a. towards the bottom,—*Of ancient time the Heir was permitted to have an Action of Debt upon a Bond made to his Ancestor and his Heirs; but the Law is not so at this day.* But herein was no Statute made to take it off; *ergo*, the Law in that case is altered without any Statute: And so in many other Particulars, which might be here cited; wherefore methinks it is the better exposition of that Maxime, that the words be understood disjunctively; and so ²⁵it thwarts not with that which the Lord *Cooke* saith in these other places: and the word (*or*) is merely a disjunctive.

[Page 25.]

Your Second Reply, p. 31, 32.

But you go on and say, *you would come as near me as you can; and you acknowledge, that though the Common Law was ever the same, where not altered by Parliament; yet in former ages they did in some Particulars take the Law to be otherwise than they now do: and if I could prove that they did so in case of free-marriage, it would take off your Argument; because the ancient Deeds and Grants are to be expounded as the Law was taken to be at the time of the Grant; as Cooke upon Littleton saith, fol. 8. b. For say you, that if it had been taken in former ages, that Lands might have been given in free-marriage with a Bastard, or one not of the*

bloud, it would have certainly been observed by some of the Sages of the Law.

²⁶ *My Answer to your Second Reply.*

[Page 26.]

I pray you, if in former Ages the Law was taken otherwise in some particulars, than at this day it is taken : which hath now joyned (to strengthen it) the common practise of the Nation (which I take to be the Common Law at this day) for many Ages together, without any contradiction ; what rational man can deny, but the Law in such particulars is clearly altered ? For in those Cases (I speak not of any altered by Act of Parliament) I would ask you whether the Law be now altered or no ? If it be altered, then you are in an error, to say the Law remains the same ; and if it be not altered, then the former Law is still our common Law, and not the Common Law as at this day it is taken ; which is used otherwise at this day than formerly : Then our Common Law in the particular cases mentioned, and at this day used otherwise than formerly, is no Common Law of *England* ; because (say you) the Common Law cannot be altered without an Act of Parliament, but remaineth still the same ; and so the Judges of *England* in all these cases, at this day do not judge aright according to our Common Law : I pray you, see what absurdities follow hereupon : And as to proving of Lands to have passed in free-marriage with a Bastard in the Age of *Amicia*, I have already given you a Precedent for it ; and the Lands did pass accordingly : and shall make it good (when I come unto it in its proper place) that *Geva* was certainly a Bastard, by as good proof as possibly can be expected in such a Case : But more of this, when I come to *Geva*.

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Your third reply, pag. 33.

In the next place, you have a long Harangue from *p.* 33, to *p.* 41. wherein you endeavour to refrain the words of *Glanvil*,

[Page 28.]

which are these, — *Quilibet liber homo quandam partem terræ suæ cum filia sua, vel cum* ²⁸*aliqua alia qualibet muliere, dare potest in maritagium*: and first, you begin to prove it by Scripture, *Deut.* 14. where a Liberty was given to the *Jews* to eat whatsoever their soul desired; and yet this must be understood of such meats as were legally clean and allowed them by the Law.

My Answer to your third Reply.

[Page 29.]

I have seldom known, nor I believe any other, any such Question as this, whether *Hugh Cyveliok* had a former wife, to be proved by Arguments of Scripture, or Nicety of Law; which is merely a Question of History: For the Text urged by you, *Deut.* 14. 26. I find no such general Latitude, which needs any Exposition as you mention: The words are, — *Thou shalt bestow that money for whatsoever thy soul lusteth after, for Oxen, or for Sheep, or for Wine, or for strong drink, or for whatsoever thy Soul desireth.* The Text is clearly restraining to those things here mentioned, which they were allowed to ²⁹eat and drink according to their Law. What is this to the point in hand? *ergo Glanvil's* words, *Cum aliqua alia qualibet muliere*, must be understood to be agreeable to the Law of the Land where he lived; that is, (as you would have it) to any except a Bastard, or a Woman not of the Donors blood: But how doth that appear to be the Law in *Glanvil's* time or upwards? *He was the first who reduced our Law into writing: Omnium primus ἑγγραφον reddere aggressus est*, saith *Spelm.* in his Gloss. p. 333. And it is easie to observe how lame and imperfect our Law was in those times, towards what it was in *Littleton's* time; and especially compared with these last ages: But in short, your Expositions all along to pag. 41. by *Bracton*, or *Fleta*, or others, or making *Glanvil* to fight with himself, unless *Glanvil's* words be interpreted as you would have them, I leave to wise men to judge, who will take pains to scan them, whether they be perti-

nent. For that wherein you say *Glanvil* contradicts himself, because ³⁰he saith, *that none can give Lands* in remunerationem *Servitii sui to hold good after the death of the Donour*; what is this to the point, why a man cannot give his Lands to any *in libero maritagio*? or that it was not usual in those dayes to pass Lands in free marriage with a Bastard, calling her only his Daughter, without the addition of Bastard, and thereby owning her to be of his blood and kindred? The sum is this; The Lawyers of latter ages do expound the Law, That Lands cannot pass in free marriage with Bastards; *ergo* it was so taken in *Glanvil's* time, and his words must be so understood, though he say no such thing: This is a great *Non sequitur*. And yet our Lawyers say now, Bastards are capable of receiving Lands after they have gained a Name by reputation; which *Amicia* had gained; as we see in the Deed, where she is called and owned by the Earl for his Daughter: But you tell me in the Close, pag. 41. That the Common Law hath alwaies been the same, because *Cooke* on *Lit.*³¹ *tleton* saith, That *the Common Law hath no Controller but an Act of Parliament*: which I have told you, must be understood, whilst it remains the Common Law; which yet may alter, and hath altered, in fundry Particulars, without any Act of Parliament; as I have before proved.

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[Page 31.]

But here I must turn you back to *p.* 23, & 24. where this hath been sufficiently answered before.

Pag. 42. Your Fourth Reply.

You say, *There is not any weight in what I say, viz.* That it seems to me in those elder ages Bastards were reputed of the Blood, by the frequent Appellation of them by the names of Uncle, Brother, Daughter, Cousin, &c. for by the same reason I should repute them of the blood now, this Age being as Civil to them in their expressions, as any Age could possibly be.

[Page 32.]

³²*My Answer.*

[Page 33.]

But where do you find almost in any Deeds of these last Ages, where such are not now called Bastard-sons, Bastard-daughters, Bastard-brothers, &c. in all Settlements and Conveyances of Annuities or Portions; which in the very ancient Ages was never used: Nay, what say you, if I affirm they be of the Bloud both now and in former Ages? though the Law will not now allow them so, because they now are esteemed in the eye of the Law *quasi nullius filius*; for if A. have a Bastard son or daughter, which is really his; they must needs be of his bloud: For no Law can extinguish Nature; though by the Common Law they are not now esteemed so. And what if I say, that the reason why in the Deeds of those elder Ages they were called Daughters without any addition of Bastard, whereby the Party owned them to be of their Kindred and Bloud, was, that the Inheritance of the Lands ³³passed in *libero Maritagio* with such, might descend to their heirs? For our Lawyers now tell us, that Bastards are capable of receiving Lands after they have gained a Name by Reputation; why may not then Bastards, having gained the Names of Daughters, receive a Grant from their owned Fathers, either in Frank-marriage, or otherwise.

And now you come to *Geva*, and my Precedent.

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For the Precedent I have given, wherein (I say) Lands were given in *libero maritagio*, you conceive it will not hold; 1. *Because it doth not certainly appear that Geva was a Bastard; for in all the Records that I cite, she is called Earl Hugh's Daughter; and in one of them, she calls Randle Earl of Chester her Cofin; which makes it probable, that she was legitimate; especially since you do not find by any Deed, Record, or Author whatsoever, ³⁴that she is at any time called a Bastard.*

My Answer to the first Reason.

Though we find her not called Bastard in exprefs terms ; yet we find it implied in an Author contemporary, by certain and fure confequence, which I believe can never be fully answered.

Secondly.

Theſe words of Ordericus p. 787. — Richardus pulcherrimus puer, quem ſolum ex Ermentrude filia Hugonis de Claro monte genuit, conſulatum tenuit, &c. by which words you are not ſatisfied, but he might as well mean, that Richard was the only Son, as well as the only Child begot on Ermentrude : for there is no neceſſity to take the word (ſolum) adverbially : neither is it marked as an Adverb in Ordericus his Book ; though it be ſo in mine : — And though he tells us, p. 522. that E pellicibus plurimam ſobolem utriuſq; ³⁵ſexus genuit ; yet he ſaith not that Geva was one of them. [Page 35.]

My Answer to the Second Reason.

But you will not perhaps be ſatisfied of his meaning ; for he ſaith not, *Quem ſolum filium*, as you interpret him ; but indefinitely, *Quem ſolum ex Ermentrude genuit* : So that, whether *ſolum* be underſtood adverbially (which certainly to moſt men will here ſeem more proper) or whether you take it for a Noun, you can make no more of it in Engliſh than thus, *Richard* a beautiful youth, whom only Earl *Hugh* begot on *Ermentrude*, &c. For whether we Engliſh it, whom only he begot ; or whom he only begot, it retains the ſame ſenſe ; for if any other perſon, either Son or Daughter, were begotten on *Ermentrude* by Earl *Hugh*, then could it not be ſaid that *Richard* was only begot on *Ermentrude* ; and can any man now imagine from this teſtimony of *Ordericus*, that Earl *Hugh* had any other Iſſue by *Ermentrude* ³⁶but only *Richard* ? So that if we believe *Ordericus*, who living

in that Age, knew the truth better than we can now, *Geva* was no Daughter by *Ermentrude*; and by certain consequence must be one of the base Issue mentioned by *Ordericus*, though he names none in particular: and she cannot be by any former Wife (your old Subterfuge) because Earl *Hugh* had never any other Wife; which ought either to be proved by you, or else no good reason appears to the contrary; and then sure the Deed proving *Geva* had Lands given in free Marriage, the precedent holds and proves, that Lands in those elder Ages passed with Bastards in free Marriage, whom they owned for their own Children; ὃ περ εἶδει δεῖξαι. *quod erat demonstrandum*. I add further, that if *Hugh Lupus* had a Daughter by *Ermentrude* (for you your self confess and expound the words of *Ordericus* to be, that Earl *Hugh* had no other Son) what advantage is it for your purpose, unless *Geva* was that Daughter, and so she be legi-
[Page 37.] 37timate? See now, then *Geva* must needs be Sister of the Whole-blood to Earl *Richard*, and by consequence sole Heir to her Brother of all the Earldom; as you interpret *Ordericus*: and so I leave it to every Readers Judgement; and then by your own Argument, she should have had the Earldom.

Thirdly, *Page 45.*

Then you proceed to my Objection, *That if Geva had been Legitimate, her Issue ought rather to have succeeded into the Earldom of Chester than Randle de Meschines, after the death of Richard Earl of Chester: That doth not at all follow (say you) because it is possible the Earldom of Chester at that time (as most times Earldoms anciently were) might be entailed on the Heirs-Males only, and then the Male Line being extinct, why might not the King confer it as well upon Randle de Meschines who was a near kinsman, as on a stranger, which later course is also usual*
[Page 38.] 38*at this day; and it is very probable, that the Earldom was entailed on the Heirs-Males only; for James York in his union of honour, p. 105. says, That this Randle was made Earl by grant of*

King Henry the Firſt; and if ſo, it came not to him by^s Deſcent; and ſo all that I object, you ſay, is fully answered. But if it had been ſo, that the Earldom had been to deſcend to the Heirs general; if Geva was Daughter of Hugh Lupus by another Wife beſides Ermentrude, then the Earldom of Cheſter would have deſcended from Earl Richard to Randle de Meſchines by his Mother, being Aunt of the whole blood to Richard, and not his Siſter Geva, or her Iſſue, they being but of the Half-blood.

My Answer to the third Reason.

Let any ingenious Reader obſerve, whether any ſubſtantial Answer be here given at all; you ſay it is poſſible that the Earldom was then entailed on the Heirs Males onely; but will you argue upon poſſibilities, to ³⁹prove a thing *de facto*? but ſuppoſe it were ſo entailed, why ſhould not the King have conferred it on the Iſſue of *Geva*, before *Randle de Meſchines*, that being the Iſſue of a Siſter, and *Randle* the Iſſue but of an Aunt? or why may you think that the King (though he gave it to *Randle*) did not give the honour and Lands unto him as in whom was the greateſt right to have it? but to this you give no Answer at all; but we find not that the Iſſue of *Geva* ever moved for it. The true reaſon being that her Title was not good; but had ſhe been Legitimate, it is more then probable, ſhe would have looked after the obtaining of ſo great an inheritance, yea and obtained it too before *Randle*: Nay, had ſhe been but of the Half-blood (which is your old and onely Subterfuge) ſhe would by all probability have buzed hard for ſo great an Eſtate in thoſe Ages, before ſhe had loſt it; but you are now come to an excellent way of arguing by ifs, and ands, and poſſibilities; by which means Answers may be ⁴⁰made to any thing even to eternity; but if you would ſubſtantially prove *Geva* to be of the Half-blood, then muſt you prove *Hugh Lupus* to have another Wife before *Ermentrude*, and *Geva* to be the Daughter of that very Wife; I would fain have you but to prove that ever he

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had another Wife by any Historian, or Record ; this would be something ; but what you here say, is nothing ; and then you Instance, that the Earldom of *Chester* probably was entailed on the Heirs Males onely, because *James York* saith, that *Randle Meschines* was made Earl by the Kings grant ; and if so (say you) it came not to him by descent ; who must grant it him, but the King ? what doth hinder, but the King gave it to him as one who by descent had most right to it, although he was not the direct Heir Male of Earl *Hugh*, but of another Family, yet a near Kinsman by marriage ? And therefore must now come in by a Grant ; yet for all this, no necessity, that the Earldom was entailed ⁴¹at that time on the Heirs Males onely.

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Fourthly, *Page 46.*

And now you come to show me a Precedent (which I desired) where ever the Heirs of an Aunt inherited before the Heirs of a Sister, both legally born, &c. And now you will show me where an honour in such a case came to the Heirs of the younger Sister, and not to the Heirs of the elder Sister ; which is full as much (say you) as if it were done in the case of a Sister and an Aunt ; and you Instance out of Birds Treatise of Nobility, p. 96. in the Case of Raufe Lord Cromwell, being a Baron by Writ, died without Issue leaving two Sisters and Co-heirs : Elizabeth the eldest Married Sir Thomas Nevill, Joane the younger Married Sir Hunt Bourcher : Bourcher was called to Parliament as Lord Cromwell, and not Sir Thomas Nevill.

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⁴²*My Answer to the fourth Reason.*

Bird indeed alledgeth this Precedent in the place cited ; where he tells us before, That the Question or point [that is, whether a Barony by Writ may descend to the Heirs Females or no ?] is somewhat perplexed, by means of difficult Presidents ; and now in this place he saith (comming to compound the Controversy)

that it is observed, that some Precedents do prove that Baronies by Writs have descended unto Heirs Females, whose Husbands have been called to Parliament, whether in regard of themselves, or in regard of their Wives, it matters not: and secondly, out of the Precedents it is to be observed, That the King is nevertheless at liberty to call to Parliament, whom he shall think most meet in his Princely Wisdom, as his Majesties Progenitors in former Ages have observed; and then he brings in the Case of the Lord *Cromwell* before mentioned: thirdly, it is ob-⁴³served, that if a Baron by Writ dye without Heir Male, having Daughter, or Sister, or other (who can challenge the Lands of such Baron deceased) the Title of such Heir Female hath been heretofore allowed, &c. Now the Case comes as near to the Case of *Geva*, as an Apple to an Oyfter; for let any rational man be Judge, whether the King by his Prerogative Summoning by his Writ to Parliament the Husband of the younger Sister and Co-heir, before the Husband of the elder Sister and Co-heir, both of them sharing the Lands equally, be any thing to the Point of *Geva*, or to satisfy why she should not have had both the Earldom of *Chester*, and all the Lands thereof, had she been legitimate, and by consequence sole Sister and Heir to her Brother *Richard* Earl of *Chester*. And in this Case of the Kings Writ proposed, yet you see the Sisters shared the Lands, as by right they ought to do; and so I shall pass to your next Reason.

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⁴⁴Fifthly, Page 48.

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But now you come and ask me what I will say, if this Deed which I alledge to be made to Geva, will not at all concern Amicia; because Cook upon Littleton, fol. 21. b. (which in your Book you have miscited also by putting the Page for the Folio) tells us, that these words [in liberum maritagium] are words of Art, and so are necessarily required: As if a man gave Lands to another with his Daughter in Connubio soluto ab omni Servitio, yet here passeth but an Estate for Life: And the words in the Deed to Geva are

not in liberum maritagium, but in libero conjugio; and so are but like the words in Connubio soluto ab omni Servitio, which make but an Estate for Life; and so might be passed to a Bastard or any other — and then after you say, the Deed to Geva is worded as if it intended onely an Estate for Life, there being no mention of her Heirs: and secondly, it is given to Geva alone, and not unto a Husband ⁴⁵with her; whereas that given to Manwaringe with Amicia in free Marriage, mentioneth their Heirs.

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My Answer to the fifth Reason.

Though the Lord Cook say, *That by these words in Connubio soluto ab omni Servitio, there passeth but an Estate for life*; yet he faith not, *That by these words in libero conjugio, passeth onely an Estate for Life*: nor in Case the words had been in *libero Connubio*, he faith nothing of them; although you are pleased to say, *That the words in libero Conjugio, are but like the words in Connubio soluto ab omni Servitio, which make but an Estate for Life*. I think, Sir, you and I being no professed Lawyers, had best to leave these things to the Sages of the Law; and notwithstanding the Criticism, I beg both your Pardon, and my Lord Cooke's too if he should have said it (which I do not find that he doth) in this Case of *Geva*; for the Lands in the Deed mentioned did descend to her Heirs by ⁴⁶*Bassett*: and even at this day it is called *Drayton-Bassett*, in distinction of other Towns called also *Drayton*; because the *Bassets* were anciently Lords thereof; and this very Deed was taken out of a Manuscript in *Arundel-house*, wherein the old Deeds belonging to the *Bassets* of *Drayton-Bassett* in *Staffordshire* were enrolled about the Reign of *Richard the Second*, as you may see it mentioned in my Book. Again you say, *The Deed to Geva is worded as if it intended onely an Estate for Life; and is made to Geva her self without the words [her Heirs] mentioned therein*; where you are to take notice, that this Deed of the first *Randle Earl of Chester* is but a Confirmation to his Coſin *Geva* of a former Deed, *Sicuti Comes*

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Hughes *ci in libero Conjugio dedit*; which Deed (may be) had the Land passed to her and her Heirs, or to her Husband with her and to their Heirs: But for certain, she and her Heirs by *Basset* had the same Land, however Earl *Hugh's* Deed did run: I add further to your Ob-⁴⁷jection, that it was intended but for Life, because given to her onely without the word (Heirs): *Cooke* upon *Littleton*, fol. 21. *b* citeth *Peter Saltmarsh* Case, and *Fitz Herbert de Natura Brevium*, fol. 172. that Lands may be given by a Man to his Son in Free-marriage; and why not as well to his Daughter alone in Free-marriage? which words of Frank-marriage do of themselves create an Estate of inheritance, as *Cooke* saith on the same Page. And now we have done with *Geva*; and I appeal to the indifferent Reader, whether my Reasons alledged for her Bastardy in my other Book, be by you in the least taken off by any solid Answers or Reason to the contrary; although in your Book you brand me with an aspersi^{on} of her.

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Page 50, 51.

And now you come to the second Reason alledged, *To prove that Amicia is legitimate; which you say hath its full strength yet, and is not at all* ⁴⁸*weakened by any thing I have said: For in my computation according to reasonable suppositions it cannot be well affirmed, that Hugh Cyveliok was above seven or eight years, or thereabout, older then his Wife Bertred: But by your computation, you say possibly he may be 26. or 27. years older: whosoever will take pains to scan both our computations, will see which is more moderate and reasonable: in yours you suppose Maud, Earl Hugh's Mother, to be born the second year after her Mothers Marriage; and Maud Married in the 16th year of her Age, and Earl Hugh born in the 17th year of Maud's Age which falls in Anno 1129. and so all in the utmost possibility; and if we may compute by possibilities, as you do, I say Earl Hugh might be but four years older then Bertred; but if you will go by strong proba-*

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bilities, that Earl Randle (Father of Earl Hugh) was Married by Robert Earl of Glocester unto Maude his Daughter, thereby to draw him to the Part of Queen Maud his Sister, about the very year 1139. before which ⁴⁹time we find no mention in our ancient Historians of Randle's adlings against King Stephen; but in that very year we do, and then by some of them stiled Son in Law to the Earl of Glocester; but not before that year, that I remember: I say, if we reckon by utmost possibilities, Earl Hugh could not possibly be above 16 or 17 years older then Bertred; but rationally we may imagine he was not so old by many years: and though our ghessees may be a little in the dark, yet I think I am about the very time of his Marriage: so that if your Argument carry its full strength, it is certainly but a little strength, if any at all; it is but this: Earl Hugh was older then Bertred, Ergo he had a former Wife; and of your account, you say you may abate me several years, and yet Earl Hugh be a great deal older then his Wife: wherein you say true: but I can gather no such quantity of years in respect of his Age, reasonably to suppose him to have had any former Wife.

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⁵⁰ Page 52.

The third and fourth Reasons (you say) are onely urged as concurrent Proof with the Argument brought from the words in *libero maritagio*: So then your Achillean Argument failing, all the other fall to the ground; to which hath been spoken before.

Page 52, 53.

But yet you muster up all your forces to strengthen the third and fourth Reasons for *Amicia*: as Hugh Cyveliock's Countesse being witness to the Deed of *Amicia* in *libero maritagio* [and yet you, that take no notice of the Law in ancient times from the Law of later Ages, and insist so much upon Law, cannot but know a Wife is no good Witness either for or against her Husband, and yet both

here and in sundry other Deeds we find them put as Witnesses to their Husbands Deeds:] also Raufe Manwaringe calling his Daughter Bertrede after the name of ⁵¹the Countess [methinks he should rather have called her after the name of his former Countess, Mother of Amice, if Earl Hugh had had any such Wife] also Roger Manwaringe in another Deed calling Randle Earl of Chester and Lincolne his Uncle: Raufe Manwaringe being with the Earl at Coventry and a Witness to his Charter to his Burgeses there: also Roger Manwaringe and Henry de Audley who Married his Sister, being Witnesses to the Deed of Randle Earl of Chester and Lincolne, concerning the Abby of Deulacres: Henry de Audley's being a Witness to the Deed of Robert de Ferrars (this is far fetcht) whose Mother was one of the Sisters and Coheirs to the aforesaid Earl Randle: as also Rafe Manwaringe being a Witness to one Deed of Hugh Cyvelioks, and to three other Deeds of the said Earl Randle: These (say you) are such circumstances as shew a more great and constant intimacy between the said two families, then probably would have been, if Amicia had been a Bastard.

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⁵²To all which is easily answered, that being Witnesses to Deeds argues no great intimacy with the Parties; and though the Judge in regard of his place were more conversant with the Earl, yet Amicia may be a Bastard for all this: Let the Ingenious Reader judge. The like multitude of Charters, or more, you may find, whereto Philip Orreby Judge of Chester was Witness in like nature; and also many other Gentlemen, as well as Roger Manwaringe and Henry de Audley: But I speak not this to lessen your Family, but to show the weakness of the Argument.

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Page 54.

You say, *Although I object that frequently in Histories and Records Bastards are called Brother, Uncle, Cousin, Son, and Daughter; you grant it to be true; but that (you say) was done*

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either when Persons came to be great, as Robert Earl of Glocester did; or else done by their Relations out of humility. But I can hardly find one (you ⁵³believe) that I can certainly prove to be a Bastard, or the Son of a Bastard, who doth presume in a Deed to call so great a Person as the Earl of Chester was, his Brother or Uncle, unless he came to be a very great Person himself.

Indeed Precedents are scant; but some there be: What do you think of *Ranulpho de Astbury nepote Comitis Cestriæ*; who is put the last of all the Witnesses in the Deed, as you may see in the *Addenda* of my Book? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord: But you will say, I cannot prove him a Bastard; yet I should be glad to find out his Ex-
traction, if he were not: 'tis a shrewd presumption.

And now we shall come to another of like Nature.

Pag. 54.

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Here you tell me, *you believe Richard Bacun's Mother was not a base Daughter of Hugh Cyveliok, nor any Daughter of his at all; because we find ⁵⁴in Monasticon, part 2. pag. 267. in his Deed of the Foundation of Roucester-Priory in Staffordshire, his Unkle Randle was living (where take notice he calls Randle Earl of Chester his Unkle) and a William was then Archbishop of York, and R. then Bishop of Chester; and there was neither Archbishop of York whose name was Will. nor Bishop of Chester whose name began with R. in the time of Randle Blundevil; and therefore you think it was Randle de Gernoniis, that Bacun calls Unkle, and not Randle Blundevil.*

But truly you are deceived in it: For it is true, as you observe, that there was no such Archbishop of York called *Will.* nor Bishop of *Chester* whose Christian Name began with *R.* both living at one time, either in the time of *Randle de Blundevil* or *Randle de Gernoniis*, that I can find: nor was the Bishop of

Chester (being also Bishop of *Lichfield* and *Coventry* at this time) then subject to the Jurisdiction of *York*, but *Canterbury*: Wherefore I do conceive the Roll, ⁵⁵from whence the Deed in *Monasticon* was written, is mistaken in *Wil.* and *R.* and mis-writ therein from the Original Chart it self; so that certainly here is a mistake: But that which is the greatest certainty to guide us, is the body of the Deed it self; which seems to be perfect and right; wherein he tells us, that he hath procured the Confirmation and Warranty of *Randle* Earl of *Chester* his Unkle for the ratifying of that his Grant. And the very next Deed following in the Roll, and transcribed in the *Monasticon*, is the Deed of *Randle* Earl of *Chester* with Confirmation and Warranty accordingly; whereunto *Roger Lacy* Constable of *Cheshire*, is a witness, who only lived in the time of *Randle Blundevil*, and of no other Earl of *Chester*; as you may see it clearly proved among the Barons of *Halton*, in my Book; nor is there any other Deed of Confirmation and Warranty to be found by any Earl, save this; wherefore certainly it must be *Randle Blundevil*, whom *Richard Bacun* calleth Unkle in his own Deed ⁵⁶of the Foundation of the said Priory; and then must it necessarily follow, that his Mother was the Daughter of *Hugh Cyveliok*; and it is plain, she was no Co-heir to *Randle Blundevil*: and it doth not in the least appear, that *Hugh* had any other wife, save *Bertred* the Mother of the Co-heirs: nor doth it appear, that ever she had so much as any Land *in libero maritagio*; which you so much stand upon in the case of *Amicia*. And now let every man be Judge, whether I have aspersed (as you call it) this Lady unjustly; and whether she be not a Bastard in the opinion of all impartial Readers: which word *aspersed*, you might well have spared; for Aspersion is when a man maliciously seeks to throw dirt in anothers face unjustly; of which sort of men I hope you do not judge me to be. But these matters fall unavoidably in my way; the truth whereof (as near as I can) I only do endeavour to find out.

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57 *Pag. 57.*

And now you come to answer the Arguments and Reasons which I bring to prove *Amicia* a Bastard.

Arg. 1.

If *Hugh Cyveliok* had no other Wife than *Bertred*, then *Amicia* must certainly be a Bastard; for she was not a Daughter of *Bertred*, as is granted on all sides:

But *Hugh Cyveliok* never had any other Wife than *Bertred*; Ergo *Amice* was certainly a Bastard.

Now the *Minor* is to be proved by the Affirmer; for *oportet affirmantem probare*.

Your Answer to the first Argument.

By this Rule (you say) I am as much bound to prove her a Bastard, as you are bound to prove that Hugh Cyveliok had a former Wife; because I clearly affirm that, as you affirm the other.

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58 *My Reply to the first Answer.*

I confess what you say to be true; yet the Rule of the affirmative part to prove, in *Logick* always holds true: for a Negative cannot be proved. But I say further, that I have proved her a Bastard by this Argument, unless he had a former wife; for you must either deny the *Major*, or the *Minor*, or grant them; wherefore the affirmative part lies now on your part to prove.

Your second Answer to my first Argument, pag. 58.

A less proof will serve by many degrees to prove a thing done long since, than will be requisite to prove a thing done lately; the

like reason is in all Cases of Antiquity; So that if you only prove her called Daughter, being so long since, she ought to be presumed legitimate; unless the contrary do appear: for the proving she was not by Bertred, doth not prove she was a Ba-⁵⁹stard, but only proves she was either a Bastard, or else by a former wife; and our Law at this day is, That a Bastard shall not be allowed to be proved a Bastard but in his life-time; why should Amice then be charged with Bastardy so many hundred years after her Decease?

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My Reply to your second Answer.

Where you say, if you only prove her called a Daughter, being so long since, she ought to be presumed legitimate till the contrary appear: I shall grant it; but here are many strong reasons to the contrary; and you are now to answer the Argument in hand; and for your asserting, that my proving she was not by *Bertred*, doth not prove her a Bastard, but proves she was either a Bastard, or else by a former wife; this is not to the Point; for the Argument runs, If he had no other wife but *Bertred*, and she no Daughter to *Bertred*, then certainly if she be a Daughter, and so called, she must needs be a Bastard: ⁶⁰and as to the point of Law you urge, that a man cannot be proved a Bastard but in his life-time to the prejudice of an Estate; because the dead person cannot answer to the exception: Yet though the Law allows not this in Pleadings, what hinders but Bastardy may be proved by History or Argumentation, after the Parties death? Suppose in a Register-Book I find such a Bastard Christened one hundred years ago, may not I justly call that Person a Bastard, whom I find so Registered? The law may make a Bastard legitimate by Act of Parliament: as we find in the case of *John of Gaunt's Children* by *Katharine Swynford*, 20. Ric. 2. 1397. according to all intents and purposes in the Law, *excepta dignitate Regali*, whereby they shall inherit as if they had been lawfully born; but may not we therefore call them Bastards? No Law can make a Bastard once born, to be no Bastard in nature; for

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[Page 61.] *quod factum est semel, infectum reddi non potest.* And to this your second An-⁶¹swer, I believe it is clearly evinced without further demonstration.

Your third Answer to my first Argument, p. 59.

You conceive that the passing of Services in libero maritaggio with Amice, doth absolutely prove that she was a lawful Child, and by consequence must be by a former wife ; and that she would not have been stiled as she is in the Deed, unless she had been a legitimate Daughter : and you cite Spelman's quoting Coustum. du Normand. Art. 77. Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur Bastardi.

My Reply to your third Answer to my first Argument.

[Page 62.] This is what before you have said over and over again ; and hath before been answered by me : But I conceive, that neither the naming of her Daughter in the Deed, nor passing of Services with her *in libero ma*-⁶²*ritaggio*, doth at all prove her legitimate ; for I have before told you, and shall entreat the judicious Reader to look back where I have before spoken of it ; That in those ancient Ages the word daughter was frequently used without the addition of Bastard, both in old Deeds and Histories : nay rarely or never was it otherwise used even to Bastards as well as Lawful Issue ; whereof are sundry Examples, as is well known to all such as are skilled in Antiquities : and by your own Argument, if she were not called his Daughter, no estate of inheritance could have passed by the Deed, though she were a Bastard ; because hereby she is owned to be of his Kindred and Blood ; and that Lands have passed *in libero maritaggio* to some such, who are known to be Bastards, though not so named ; whereof I have shewed a Precedent of those Ages in my Book, which is not refuted yet by any solid Reason to the contrary, as the ingenuous

[Page 63.] Reader may perceive *supra*, pag. 34. of this Book, & *de*-⁶³*inceps.*

And what you add out of *Spelman*, is little to the purpose, that in cases of honour and profit distinction was then made, that by the appellation of Sons, Bastards are not comprehended by the Customs of *Normandy*: what then? this supposeth that in other cases and formerly by the appellation of Sons, Bastards were comprehended: This makes directly against you: and you know what *Spelman* saith in the very words next following — *That the ancient Northern People admitted Bastards to succeed in their Inheritance; and that William the Conquerour was not ashamed of that Title, who began his Letter to Allan Earl of Little Britaine (as he did many others) Ego Willielmus cognomento Bastardus.* But what is all this to the answering of the Argument, or proving *Hugh Cyvelio*k to have had a former Wife? only you would have the words in *libero matrimonio* to prove *Amice* absolutely legitimate: this is all the Answer you give to the Point; and this will not do it, as is before proved; whither ⁶⁴I have referred the Ingenious Reader.

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Your fourth Answer to my first Argument, p. 60, 61.

And here you say, that *if all must be Bastards, if we could not tell who were their Mothers, nor directly prove their Fathers married, we might then conclude most Persons Bastards; and so you could frame my own Argument against me thus; — If Roger Manwaringe (who lived about 1119.) had no wife, then William, Randle, and Wido (Sons of the said Roger) were certainly Bastards: But Roger Manwaringe aforesaid had no wife; ergo, &c. Now if this Argument against Amicia will hold, it would also hold against these three Children of Roger, and so against all others in like nature.*

⁶⁵*My Reply to your fourth Answer to my first Argument.*

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Here you argue well; and I say to your *Minor*, that *Roger* had a Wife, though we yet know not who she was: and this

appears certainly, because the Lands descended from heir to heir. But I frame my affirmative part more formally thus: If the Son and Heir of *Roger* succeeded by descent in his Inheritance, then *Roger* had a wife; But the Son and Heir of *Roger* succeeded by descent in his Inheritance; this is apparent by the enjoyment thereof from heir to heir; *ergo*, *Roger* had a wife.

If you deny the Sequel of the *Major*, I prove it thus—No Bastard can succeed in the Inheritance without a special settlement; *ergo*, if the Son and Heir of *Roger* succeeded by descent in the Inheritance, then *Roger* must needs have a Wife; and nothing appears here of any special settlement.

And so you see, the Argument retorted is answered.

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⁶⁶Now if you could prove by like Reason, that *Hugh Cyveliok* had a former wife before *Bertred*, it would be some Answer; but the passing of Lands *in libero maritagio* in that age, is no certain Argument of Legitimacy; for then I confess you would prove *ex consequenti* *Hugh Cyveliok* must needs have another wife; which is the chief contest between us; for all the rest of your Arguments for her Legitimacy, are little material, and not solid. Now you repeat this often over and over again, where you have as oft been told, that Land in those former Ages did pass to Bastards *in libero maritagio*; whereof I have given you one Precedent; which neither yet hath been, nor (as I conceive) can be rationally answered; Besides the words of *Glanvil*, implying the same; and the Term of Bastard, was, for certain, usually omitted in the Deeds and Histories of those times; and the owning them for Daughters in their Deeds, possibly that the Lands might pass to their Heirs, as owning them ⁶⁷to be of their Kindred and Blood, are all Reasons against the Deed; that it doth not prove her legitimate: Neither is the Case of *Amice*, and the three Sons of *Roger* alike; for there is nothing that appears against them, either to prove or suspect them for Bastards, as there is in the case of *Amice*; for here is a wife of *Hugh Cyveliok* certainly recorded; a Son and four Daughters carrying away all Earl *Hugh's* Lands: also Earl *Hugh* certainly

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known to have fundry Bastards ; and *Amice* having no share of any of the Lands whatsoever, though the Eldest Daughter of Earl *Hugh* legitimate by a former wife, as you suppose: all which carries more than a bare probability that *Amice* was a Bastard. And therefore here is a necessity of proving a former wife, which I firmly believe Earl *Hugh* never had : And to this you say, the falling of the great Estate to the Co-heirs, was the cause of their being taken notice of by the Historians of that Age ; which Inheritance (say you) came to them as Sisters to *Ran-*⁶⁸*dle* of the whole blood (although you prove not that Earl *Hugh* ever had any other wife) and *Amice*, you say, was of the half blood ; but you prove it not. And you say further, that *Ric. Bacun's* mother was not any Child of Earl *Hugh* : But that she was Earl *Hugh's* Daughter, I have clearly proved before, *pag.* 54. 55. 56. So that all these strong Presumptions of the Bastardy of *Amicia*, I leave to the Reader, to judge whether any thing hath been substantially said by you to evince any mans impartial judgment to the contrary, or that hath at all answered my first Argument.

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And now you come to answer my second Reason or Argument against *Amicia*, which I framed thus, — Whatsoever is given in frank-marriage, is given as a Portion ; now the release of the Service of one Knights Fee in Frank-marriage (according to your Deed) seems not a competent portion for a legitimate Daughter of the Earl of *Chester* ; especially for the eldest Daughter : for so she must ⁶⁹be, being of the first venter, which is always more worthy then the second ; and we find the other Daughters Married to four of the greatest Persons in *England*, which is a strong Presumption that *Amice* was a Bastard : methinks *res ipsa loquitur*.

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Your Answer to my second Argument, Pag. 64. 65.

To which you Answer, *That it will not hold ; for though what*

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is given in Frank-marriage, be given in consideration of a Marriage, yet it cannot properly be called a Portion — &c. and further you say, that if she had been but a Bastard, yet being a Bastard of so great a Person, she would have had a great deal more given her than these services — But you perceive, if this Deed of Earl Hugh's had been lost, I would not have believed that Sir Raufe Manwaringe had had any thing with Amicia: because then it would not have appeared: which is a strange way of arguing, about things that were done so long ⁷⁰ since. And if this be a good Reason, you wonder I do believe that Earl Hugh had any Portion with his Countess Bertred, because (for ought you yet know) it doth not appear that he had. Again you say to my alledging how the other four Sisters were Married, that you have answered that before. And though I say, that if Amice had been legitimate, she being of the first venter, would have been more worthy than those of the second — yet in this Case, when there be Sisters of two Venters, and the Brother be of the second Venter, and the Sisters claim as Heir to their Brother, then the Sisters of the Second Venter shall be preferred before those of the first Venter: and then you close your Answer in telling me that you do not understand why I call this gift of Earl Hugh's (as I do in two several places) a Release of the service of one Knights-Fee.

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⁷¹ *My Reply to your Answer to my second Argument.*

Whereunto I Reply, to what is necessary to be replied unto herein; first, whereas you say, *That if she had been a Bastard, yet being a Bastard of so great a Person, she would have had a great deal more than those services given her*: it may be so; what then? here is no reason that we can suppose she had any more Lands, neither any Money answerable to the eldest Daughter of the Earl legitimate, for the other Sisters had all the Lands of Earl Hugh; and we find not any more Lands bought by Earl Hugh for Amicia; but you perceive, that if this Deed had been lost, I would not have believed, that Sir Raufe Manwaringe had had

any thing with *Amicia*; which (say you) is a *strange way of arguing about things done long since*: and how do you know, that I should have believed that he had had nothing at all? but you would have me suppose, that *Amicia* had as much ⁷²Money as any of the Co-heirs; I am sure she ought to have had so, had she been legitimate; but I believe neither you, nor I, nor any other Person can imagine so: And if the Deed mentioned had been utterly lost, I should not then have believed that there was such a Deed: for how can any man believe that which he never knew, nor heard of? *de non Apparentibus, & non Existentibus, eadem est ratio*: and though I may well suppose, that Earl *Hugh* had a good Portion with his Wife; because he was so great a Person, yet neither I nor any person (that knows it not) can well guess what it was. And had it only appear'd by Record, That Sir *Raufe Manwaringe* had Married the Earl of *Chester's* Daughter, and nothing appeared what was given, I should then have believed she had had a greater Portion given her, then what is mentioned in your Deed: but the Deed appearing, and so small a Portion mentioned therein, makes it more strong that *Amicia* was a Bastard. ⁷³And lastly, that you may understand, what I mean by calling Earl *Hugh's* grant a Release of the service of one Knight's Fee; because the grant to *Raufe Manwaringe* with *Amicia* in Free Marriage is only the service of *Gilbert* Son of *Roger*, to wit, the service of three Knights Fees, he and his Heirs doing to Earl *Hugh* and his Heirs the service of two Knights Fees: so as the Earl hereby reserves to himself the other two Knights Fees as formerly; but now remits the service of the third Knights Fee: nor is it the grant of any Land, but of services incident to Land; but what all this is to the taking of the Argument propos'd, I leave to the Reader to Judge.

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Thirdly.

And now you come to my third and last Reason, which I did put as a probable concurring Reason, That all the Ancient His-

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torians of our Nation, who lived in that Age, and have Recorded the other Daughters ⁷⁴and Co-heirs; yet not one of them mentioning *Amicia*: which probably one or other would have done, had she been a legitimate Daughter.

Your Answer to the third Reason, Page 67.

Whereunto you say, *You conceive there is no weight at all in it; whereof I am so sensible, that I conceive it not evincing; nor do those Antient Historians take upon them to give an account of all the Children of Earl Hugh, but onely of the Heirs of Randle Blundevill: and yet (you say) this Reason is as strong as my first Reason.*

My Reply.

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I do confes I urged it but for a probable Reason; and yet (you say) it is as strong as the first Reason: Then you might have done well to have answered the first better: whereunto I am sure you have made no substantial Answer as yet: wherein I appeal to all indifferent and judicious⁷⁵ Readers, who shall read this Book. And for the probability of this, you say, *That the Historians take not upon them to give an Account of all the Earls Children, but the Heirs of Randle*; but do you find that they have left out any of his legitimate Children, except this whom you suppose legitimate?

And then you tell me, *Mr. Cambden hath mentioned Amicia, though not among the Co-heirs, yet without the brand of a Bastard*: you know well, he is but of very late standing, and not an Historian Contemporary with *Amicia*: and so you and I do now mention her. And then you tell me over again (which I have before Answered) that those Judges and Heralds that have seen your Deeds (of which I have heard, but I am sure I yet know not who they be, nor ever saw any thing attested under any of their hands, nor their Reasons nor grounds for their Opinion) and you

mention Mr. *Dugdale* in particular, for whom I have ever had a great esteem as a diligent ⁷⁶searcher of Antiquities, all which you again and again affirm to be of your Opinion, that *Amicia* was legitimate; but because I have before spoken of this *Supra*, pag. 19, 20. I shall onely ask here, what weight can be drawn from this? some Persons are of that Opinion, *Ergo* it is so: whole Councils have erred, unless like the Romanists, you will say *The Pope cannot err*: And perhaps those Persons you mention, never heard what is to be said against that Opinion: whereas it were but equal that in consultation of Opinions, both sides should shew what could be said *Pro* and *Con* both together; which hitherto (for ought I know) onely one Party hath privately put the Case, as he pleaseth; I have often told you, I would have you confute me with Reason, not Opinions: for one man may be of one Opinion, and another man of another Opinion; but it is firm Reason which must sway every mans Judgment.

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⁷⁷ Page 69, 70, 71, &c.

[Page 77.]

And lastly, you put down two Deeds, wherein Sir Raufe Manwaringe Justice of Chester is subscribed Witnefs before the Barons of Cheshire; for which you think it will be difficult to give a Reason, if Amice were a Bastard.

To this I say, it will not be difficult at all to give a Reason: and much more easie, then to give a Reason, why *Amice* should be no Bastard, because Sir *Raufe Manwaringe* is sometime Subscribed before the Barons of *Cheshire*. The Reason I give is this, that antiently in those Ages, the Justice was put sometimes before the Barons, and sometimes after; and sometimes after the Constable, and Dapifer, and before the rest of the Barons, as it happened: for proof, see the Deed in my Book making the Baron of *Halton*, the prime Baron, pag. 160. where the Justice comes after all the Barons; also in the Deed ⁷⁸of Earl *Randle* to his Barons, pag. 162. where the Justice comes next after the

[Page 78.]

Constable and Dapifer, and before the other Barons ; see also in my Book, *pag.* 130, 131. two Deeds made by *Hugh Cyveliok* : In the one, the Justice is put after the Constable and Dapifer : In the other, the Justice is put before them ; many other like examples may be produced else where : I will appeal herein to Mr. *Dugdale*, or to any Antiquary in *England* : and considering the great uncertainty of Subscription of Witnessees in old Deeds, sometimes putting one before another, in one Deed, and again putting the same Person after the other in another Deed ; sometimes putting *Domino* prefixed before the names of some Persons in one Deed, and omitting the word *Domino* before the names of the same Persons in another Deed, whereof I have spoken, *pag.* 5, 6. in the beginning of this Book. I say, had you well considered or observed these things, it was not worth your labour to have added those three or ⁷⁹four leaves in the close of your Book. And now I appeal to all Readers, whether those Grounds and Reasons alledged in my former Book against the legitimacy of *Amicia*, as also to prove the Bastardy of those two other Ladies (as you call them) *Geva*, and the Mother of *Richard Bacon*, be evinced by any solid Answer or Reason given yet to the contrary.

[Page 79.]

And so I take my leave for ever of this Trivial Controversie ; but shall ever remain,

SIR,

Mobberley

May 15. 1673.

*Your affectionate Cousin
and very humble
Servant,*

PETER LEYCESTER.

⁸¹ Courteous Reader,

[Page 81.]

I Have here in the end of this Book an opportunity to Rectifie some Omissions and Errours in my former Book, which escaped me through misinformation of others, and desire thee to pardon and amend them, as followeth.

Page 206. after the last line but two, should have followed thus —

— Also another *John Brereton*, son of *George Brereton* of *Ashley Esq*; was Baptised at *Bowdon* the 20th day of *June*, 1576. he was afterwards *Sir John Brereton Knight*, the King's Serjeant at Law in *Ireland*; he died without Issue, whose Widow Married the Lord Chief Justice *Bramston*: *Sir John* left all his Personal Estate (which was great) to his Widow, and *Sidney-Colledge* in *Cambridge* where he was educated, and to *Randle Brereton* his youngest Brother; which *Randle* lived in *London* ⁸²and Married, and had Issue by his Wife a Daughter Married to *Mr. Bourcher* of *Glocestershire*, and a Son called also *Randle Brereton* who hath an Estate in *Lincolnshire*, and is the onely Issue Male, or Heir-male, of all the Family of the *Breretons* of *Ashley* now surviving, 1672.

[Page 82.]

Page 210. line 27.

Where these words [*With the little Fields above, lying up to Aston Town-field*] are totally to be expunged.

Page 214. line 18, 19.

Where it is said — [*Daughter and sole Heir of Sir Henry Willoughby*] Read — *Daughter and sole Heir to her Mother, and Daughter and Co-heir to her Father Sir Henry Willoughby; for Sir Henry had three Daughters and Co-heirs: Anne, after the death of Sir Thomas Aston, Married Mr. Gray younger Son of the Earl of Stamford; she was by the first Wife of Sir Henry; he had also two Daughters by his second Wife.*

[Page 83.]

⁸³ *Ibidem* page 214. line 25.

Read — *He was Loyal to his Prince, and raised a Regiment of Dragoons for the King at his own cost and charge, and was a Gentleman of good Parts: but was unfortunately — &c.*

Page 223.

The 6, 7, 8. lines are to be expunged totally.

Page 233. line 4.

There it is said — *Maud Married Sir Robert Nedham of Shenton in Shropshire*] which words are to be expunged there.

Page 315. line 5.

Where it is said — *George Venables of Agden Esq; one small Tenement*] Read — *George Venables of Agden Esq; three small Tenements in Mere, in possession of William Occleston, Mi⁸⁴chaiah Bower, and Peter Chorton.*

[Page 84.]

Page 315. line 13.

It is there said — *Edward Allen of Rofthorne, one small Tene-*

ment in *Mere*] Read thus — *Edward Allen* of *Rosthorne*, one small Tenement in *Mere* in possession of *Henry Hunt*, and two parts of *John Occleston's* Tenement.

Pag. 316. line 18, 19.

Where it is said — *Geffrey Cartwright* Gentleman, hath lately bought the *Shaw-house* in *Millington*, from *Millington* of *Millington*] Read thus, — *Geffrey Cartwright* Gentleman, hath the *Shaw-house* in *Millington*, which *Richard Cartwright* his Father bought of *Thomas Shaw*, 1646. which Land was formerly *John Wilkinsons*; and *Shaw* came to it by Marriage.

⁸⁵ *Pag. 326. lin. 16.*

[Page 85.]

Where it is said — *Came to Francis Cholmondeley*] Read thus — *Came to Francis Cholmondeley for his life.*

Pag. 327. line 10, 11.

It is said — *Thomas Brooke*, Second Son married *Jane* Daughter of one *Weston* of *Sutton* nigh *Frodsham*, Tenant to *Warburton* of *Arley*] instead whereof read — *Thomas Brooke*, second Son, married *Jane Woodfen*, Daughter of *Richard Woodfen* of *Sutton* near *Frodsham-Bridge*: Her Mother afterwards married *William Weston* of *Astmore* in *Halton*; so that *Weston* was but her Stepfather.

Pag. 327. line 13.

Where it is said — *Richard Brooke*, third Son of Sir *Richard*, Professor of *Physick*, died at *Boughton* nigh *Chester*, without Issue, anno Dom. 1667.] ⁸⁶put out the words [*without Issue*]: for he had Issue by *Sarah* his former wife, daughter of Judge *Warburton* of *Hifferton-Grange* in *Weverham-Lordship*; although he

[Page 86.]

had no Issue by *Anne* his latter wife, the Widow of *Edward Holland* of *Denton* in *Lancaſhire*, Eſq; and Daughter of *Edward Warren* of *Pointon* in *Cheſhire* Eſq;.

Pag. 334. line 33, 34.

Where it is ſaid — *Which Chappel Margery his Wife ſurviving erected, with the two Monuments therein for her ſelf and Husband,* anno Dom. 1456.] inſtead whereof, read thus, — *Which Chappel this Randle cauſed to be erected, with the two Monuments therein for himſelf and wife,* an. Dom. 1456.] *for Margery died before him, to wit, 27. Hen. 6. and he died 35. Hen. 6.*

Page 280. line 44.

[Page 87.] Where in the Margin it is ſaid — *Corrupte pro ſaltuariis, id eſt, For-⁸⁷reſtars]* Read — *Corrupte pro ſaltationibus, aut ſaltatoriis, id eſt, Deer-leaps.*

Pag. 335. line 12.

Where is omitted as followeth — *Agnes, another Daughter of John Manwaringe, Eſquire, married Sir Robert Nedham of Crannach in Cheſhire Knight, and afterwards of Shenton in Shropſhire; which Shavington, vulgo Shenton, was eſtated on him by Judge Nedham, who purchaſed the ſame: And this Match appeareth by a blewish Marble-ſtone or Monument, in the Chancel of Adderley-Church in Shropſhire; whereon are the Pictures of the ſaid Sir Robert Nedham and Dame Agnes, and ſeven Sons and two Daughters; as alſo an Inſcription (all of them in Braſs) as followeth, —*

**Here lieth buried under this Stone the Bodies of
Sir Robert Nedeham Knight, and Dame Agnes**

his Wife, Daughter of John Manwaringe of Pever
Esq;: which ⁸⁸said Robert deceased the iiij. day of [Page 88.]
June, *Anno Dom.* 1556. And the said Agnes de-
ceased the 11. day of May, *Anno Dom.* 1560.

Page 345. line 36.

The word [*where*] is to be expunged: for the Lady *Mary Cholmondeley* died at *Vale-royal*, which she purchased, and gave it to *Thomas Cholmondeley* her fourth Son, and his Heirs.

Page 361, line 19.

Where it is said — *Died unmarried*, 1653.] Read — *Was never married; he drowned himself the sixth day of July*, 1653.

Page 374. line 4

Read Sir *Amos Meredeth* Baronet of *Nova Scotia*. a.

Page 376. line 26.

Where is omitted — *Hugh Toft*, ⁸⁹another Son, Parson of *Al-* [Page 89.]
derley, and after of *Stoppport*, 8. Hen. 4. lib. C. fol. 229. T. num.
40, & 42.

Anno 1402. 3. Hen. 4. 29. Novem. *Nobilis Vir Johannes le*
Manwaringe Dominus de Stockport presentat ad Ecclesiam de
Stockport Hugonem de Toft Capellanum, post mortem Jacobi de
Bagiley ultimi Rectoris, lib. B. p. 12. d.

Page 381. line 28.

Where is omitted — *also another Son, called William Leycester*,
who *died without Issue*.

Page 392. line 22.

Where should follow thus — *The said Robert Venables bought all the Demain-Lands, and also Wood's Farm with the Mills, called Cranage-Mills. But the Tenements were some of them bought by the Tenants themselves, and some of them by others.*

[Page 90.]

⁹⁰ Page 437. line ult.

Add there thus — *Only Dodleston remains yet to Cheshire, and Marlestone nigh Eccleston, and Claverton and Lache nigh Chester; which were all part of Atiscros-Hundred.*

These Amendments, Reader, will set thee straight in the Perusal of my former Book; together with the correction of the Errata's of Printing; committed by the great negligence of the Printer; which are now mentioned and rectified by a distinct Page at the end of the said Book. Farewel.

FINIS.

The Twenty-sixth Report

OF THE

COUNCIL OF THE CHETHAM SOCIETY,

*Read at the Annual Meeting, held, by permission of the Feoffees,
in the Audit Room of Chetham's Hospital,
on the 1st of March, 1869.*

THE first work for the year 1868-9, and the seventy-fifth in the Chetham Series, is *Lancashire Funeral Certificates, collected from various sources*. Edited by THOMAS WILLIAM KING, Esq., F.S.A., York Herald. With additions by the VICE-PRESIDENT of the Chetham Society.

Funeral Certificates are, as is well known, among the most valuable materials of Genealogy and History. From what cause it has happened it is difficult to conjecture, but the fact is clear that the number of those which have yet been found relating to Lancashire is much more scanty than the long list and importance of its ancient families, noble and gentle, would naturally lead an inquirer to expect. What however his research enabled him to collect, the York Herald has brought together in this publication, and these valuable documents have been taken as a text by the Vice-president of the Chetham Society, who has illustrated them by an ample commentary from his multitudinous stores of biographical and genealogical information, and which will be read with great interest by every one to whom the family history of Lancashire is a subject of attraction. Amongst the families, to individuals of which the Certificates refer, are the Radcliffes, Stanleys, Norris's, Barlows, Irelands, Molineux's, Traffords, Fleetwoods, Moores, Bolds and Mosleys; and there are two names in the series which never fail to bring to mind the piety and charity of the olden time, Katherine Bret-targh the sister of John Bruen, and George Clark the eminent benefactor of Manchester.

The second and third of the publications for the year 1868-9, and the seventy-sixth and seventy-seventh in the Chetham series, are *A Collection of the Tracts published 1673-9, in the Controversy between Sir Peter Leicester and Sir Thomas Mainwaring, as to the legitimacy of Amicia, daughter of Hugh Cyvelioc, Earl of Chester*. Edited by WILLIAM BEAMONT, Esq., in 2 vols.

The controversy on the subject of *Amicia* is one unique in its kind. The war between these two doughty baronets on the question of the legitimacy of an ancestor living 500 years before, from whom they were both, as well as the royal family of England, descended, lasted six years, and gave rise to fifteen tracts or pamphlets. The admirable historian of Cheshire, whose motto was, *Amicus Socrates, amicus Plato, sed magis amica Veritas*, and who

would not have sacrificed one atom of truth to remove what might be considered a blemish from the most illustrious pedigree, contended firmly, after arriving at the conscientious conclusion with many a sigh and, perhaps, some tears, that this great lady, who married Ralph Mainwaring, judge of Chester, was base born, while Sir Thomas Mainwaring, with all the learning of a profound legal antiquary and all the chivalric spirit of a gallant cavalier, indignantly repudiated the charge, and again and again broke a lance in her defence in this solemn but bloodless genealogical tournament. The death of Sir Peter Leycester closed this controversy, which otherwise might have outlasted the siege of Troy, and all that was left for Sir Thomas was to publish a recapitulation of the arguments in dispute in a final pamphlet, and to claim the honour of victor in the duello, in which he was supported, if not by all, by most of the antiquaries and lawyers of his day. In the course of the dispute it was necessary to discuss many curious and recondite questions of history and law, and these are dealt with so ably and learnedly that the tracts will always have a value, independently of their bearing on the main subject on which the controversy hinges. It has long, therefore, been felt that a republication of the whole of the series of tracts was most desirable, and, in 1854, Mr. J. G. BELL printed one which had previously remained in manuscript, which he dedicated to the President and Members of the Chetham Society, with a preface by the late Dr. TURNBULL. Some, however, of the printed tracts are so rare that it was most difficult to meet with a complete series of them, and it was not till Sir HARRY MAINWARING, the present worthy representative of the family, most kindly placed at the command of the President his perfect collection of them that a satisfactory publication became practicable. The tracts now printed include the whole that appeared in the controversy, and the introduction prefixed to them by the editor, W. BEAMONT, Esq., will afford an excellent condensed view of the arguments on each side and the various points involved in this famous family dispute, which is, taking into consideration the nature of the question, the relationship of the opponents, and the manner in which the battle-royal is conducted, without a parallel in genealogical history.

The expense of engraving the portrait of Sir Thomas Mainwaring, to accompany the work, has been kindly contributed by W. M. CUNLIFFE BROOKS, Esq., F.S.A.; and the expense of engraving that of Sir Peter Leycester by R. H. WOOD, Esq., F.S.A., the zealous and indefatigable Hon. Secretary, to whom respectively the grateful thanks of the members are due.

The three volumes thus enumerated have been retarded by various circumstances, which it is unnecessary to mention, but are all in a state of great forwardness, and will very shortly be issued to the members.

Since the last annual meeting the Chetham Society has undergone a severe loss in the death of the late MR. JOHN HARLAND, F.S.A., who had been for thirteen years a member of the Council, and who had edited no less than fourteen valuable volumes in the Chetham Series. So large, indeed, had been for many years his contributions to the publications of the Society, and so generally have they met with the approval of the public, that amongst the names of those who have deserved best of the Society and most aided its progress and success, that of MR. HARLAND will ever be numbered. It would be difficult indeed for language to do justice to the obliging readiness with which he took up any suggested work, and the energy and perseverance with which it was carried through, to his extraordinary fund of antiquarian and general knowledge, to the thorough discipline of mind which rendered him one on whom reliance could always be placed, to the good temper with which he encountered objections, to his perfect freedom from the vanity of authorship, and to the various other qualities which made him so pleasant, as well as so useful, an ally in literary and antiquarian undertakings. That such a man should be taken away in the prime of life, and in the midst of his career of usefulness, must always be, to those who consider what he might have executed had longer life been vouchsafed him, a matter of profound regret.

The Council feel also called upon to advert to the loss of another member of the Society, the late BENJAMIN D. NAYLOR, Esq., who joined it at its formation, and who had for some years obligingly acted as one of the auditors of the annual accounts. In the Chetham Society MR. NAYLOR took great interest, having many antiquarian sympathies, and it was gratifying to see as an almost constant attendant at its annual meetings one whose co-operation was always of value and was always cheerfully afforded, and who was himself descended from a brother of the venerated individual from whom the Society takes its name.

The publications contemplated, or in progress, are :

1. *Observations and Instructions Divine and Moral*, by Robert Heywood of Heywood, co. Lanc. From an unpublished Manuscript. Edited by JAMES CROSSLEY, Esq., F.S.A., President of the Chetham Society.

2. *Collectanea Anglo-Poetica*, Part 4. By the Rev. THOMAS CORSER, M.A., F.S.A.

3. *The Visitation of Lancashire in 1532*. Edited by WILLIAM LANGTON, Esq.

4. *The Register of the Manchester Free Grammar School, with Notices and Biographies of distinguished Scholars*. Edited by the Rev. J. FINCH SMITH, M.A., Rector of Aldridge. Vol. 3.

5. *Worthington's Diary and Correspondence.* The concluding part. Edited by JAMES CROSSLEY, Esq., F.S.A., President of the Chetham Society.

6. *Documents relating to Edward third Earl of Derby and the Pilgrimage of Grace.* By R. C. CHRISTIE, Esq., M.A.

7. *A Selection from the Letters of Dr. Dee, with an introduction of Collectanea relating to his Life and Works.* By THOMAS JONES, B.A., F.S.A., Librarian of Chetham's Library.

8. *Poem upon the Earls and Barons of Chester*, in 62 octave stanzas, from an ancient MS. belonging to John Arden, Esq., of Stockport, believed to have been written by Richard Bostock of Tattenhall, gent., (a copy of which is in a MS. volume written by the Rev. John Watson, rector of Stockport, M.A., F.S.A., from which the present transcript was taken.)

9. A republication, with an introductory notice of, *A true Narrative of the Proceedings on the several Suits in Law that have been between the Right Hon^{ble} Charles Lord Gerard of Brandon, and A. Fitton, Esq., by a Lover of Truth.* 4to, printed at the Hague, 1663; and the other tracts relating to the same subject.

10. *Selections from the Correspondence of Sir William Brereton relating to affairs in the county of Chester during the Civil Wars.* From the originals contained in seven large folio volumes in the British Museum.

11. *A Collection of Ancient Ballads and Poems, relating to Lancashire.*

12. *Diary of John Angier, of Denton, from the original Manuscripts, with a reprint of the Narrative of his Life published in 1685 by Oliver Heywood.*

13. *A Selection from Dr. John Byrom's unprinted Remains in Prose and Verse.*

14. *A new Edition of the Poems Collected and Published after his Death, corrected and revised, with Notes, and a Prefatory Sketch of his Life.*

15. *The later Heraldic Visitations of Lancashire.*

16. *Hollinworth's Mancuniensis.* A new Edition. Edited by CANON RAINES.

17. *A Volume of Extracts, Depositions, Letters, &c., from the Consistory Court of Chester, beginning with the Foundation of the See.*

18. *Extracts from Roger Dodsworth's Collections in the Bodleian Library at Oxford relating to Lancashire.*

19. *Annales Cestrienses.*

20. *Chetham Miscellanies.* Vol. 4.

21. *A General Index to volumes XXXI. to LX. of the Publications of the Chetham Society.*

The Treasurer in Account with the Chelham Society, for the year ending 27th February, 1869.

DR.

CR.

	L.	S.	D.
1 Subscription for 1863-64 (21st year), reported in arrear at last meeting.			
1 Collected.....	1	0	0
3 Subscriptions for 1864-65 (22nd year), reported in arrear at last meeting.			
1 Collected.....	1	0	0
2 Outstanding.			
7 Subscriptions for 1865-66 (23rd year), reported in arrear at last meeting.			
2 Collected	2	0	0
5 Outstanding.			
10 Subscriptions for 1866-67 (24th year), reported in arrear at last meeting.			
3 Collected.....	3	0	0
7 Outstanding, of which 1 is considered irrecoverable.			
49 Subscriptions for 1867-68 (25th year), reported in arrear at last meeting.			
21 Collected.....	21	0	0
28 Outstanding, of which 1 is considered irrecoverable.			
12 Subscriptions for 1868-69 (26th year), accounted for at the last meeting.			
49 Life Members reported at the last meeting.			
1 since dead.			
1 Commuted into Life Membership	10	0	0
216 Collected	216	0	0
277			
73 Arrears.			
350			
13 Subscriptions for 1869-70, paid in advance	13	0	0
1 Subscription for 1870-71, paid in advance	1	0	0
Books sold to Members	23	14	0
Book Postage received	0	1	6
Dividends on Consols	7	6	4
Interest from the Bank....	5	2	6
	£304	4	4
Balance 1st March, 1868....	534	2	3
	£838	6	7

	L.	S.	D.
1868.			
Mar. 27. Engraving Petition to Duchy Office	0	3	6
Advertising	0	9	0
Copy of De Lacy Inquisition	1	1	0
June 27. County Fire Office (Insurance)	4	2	6
July 22. Charles Simms & Co.:			
(Vol. 73) Manchester School Register, Vol 2.....	180	7	3
(Vol. 74) Three Manchester Documents	74	11	9
Binding, &c., Vols. 73 and 74.....	56	4	11
Printing and Sundries	11	14	3
1869.			
Feb. 25. Advertising	0	18	0

	£329	12	2
Balance 27th February, 1869.....	508	14	5
	£838	6	7

March 18th, 1869.

Audited and found correct,

GEORGE THORLEY,
GEORGE PEEL,
HENRY M. ORMEROD,) AUDITORS.

A. H. HEYWOOD, *Treasurer.*



Chetham Society.

LIST OF MEMBERS

FOR THE YEAR 1869—1870.

The Members, to whose names an asterisk is prefixed, have compounded for their Subscriptions.

- ACKERS, B. St. John, Pricknash Park, near Gloucester
- Adams, George Edward, M.A., F.S.A., Rouge-dragon, College of Arms, London
- Agnew, Thomas, Manchester
- Ainsworth, Ralph F. M.D., F.L.S., Manchester
- Allen, Joseph, Tombland, Norwich
- Armitage, Samuel, Pendleton, Manchester
- Armstrong, Rev. Alfred Thomas, M.A., Ashton Parsonage, Preston
- Ashton, John, Warrington
- Ashworth, Henry, The Oaks, near Bolton
- Aspland, Alfred, Dukinfield
- Aspland, Rev. R. B., Well Street, Hackney, London
- Athenæum Club, London
- Athenæum, Liverpool
- Athenæum, Library, Boston, U.S.
- *Atherton, Miss, Kersall Cell, near Manchester
- Atherton, James, Swinton House, near Manchester
- Atkin, William, Little Hulton, near Bolton
- Atkinson, William, Ashton Heyes, near Chester
- Avison, Thomas, F.S.A., Liverpool
- Ayre, Thomas, Trafford Moss, Manchester
- BACUP Co-operative Store, Bacup
- Bagshaw, John, Manchester
- Bain, James, I, Haymarket, London
- Baker, Thomas, Brazen-nose Street, Manchester
- *Bannerman, John, York Street, Manchester
- *Barbour, Robert, Bolesworth Castle, near Chester
- Barker, John, Broughton Lodge, Newton in Cartmel
- *Barlow, Mrs., Greenhill, Oldham
- Barratt, James, Lynn Hall, near Warrington
- Bartlemore, Miss, Beechwood, Rochdale
- Barton, Richard, Caldý Manor, Birkenhead
- Barton, Samuel, Whalley Range, Manchester
- Beamont, William, Orford Hall, Warrington
- Beever, James F., Manchester
- Bentley, Rev. T. R., M.A., St. Matthew's Rectory, Manchester
- Berlin Royal Library
- Beswicke, Mrs., Pyke House, Littleborough
- Birmingham, Borough of, Central Free Library, Birmingham
- Birley, Hugh, M.P., Moorlands, near Manchester
- Birley, Rev. J. S., M.A., Halliwell Hall, Bolton
- *Birley, Thomas H., Hart Hill, Eccles, Manchester
- Blackburn Free Public Library and Museum
- Blackburne, John Ireland, Hale, near Warrington
- Bolton Public Library, Bolton-le-Moors
- Booker, Rev. John, M.A., F.S.A.; Sutton, Surrey
- Booth, Benjamin W., Swinton, near Manchester
- Booth, John, Greenbank, Monton, Eccles
- Booth, William, Holly Bank, Cornbrook, Manchester
- Boston, U. S., Public Library
- Bower, Miss, Old Park, Bostol, Abbey wood, London S.E.
- Bowers, The Very Rev. G. H., D.D., Dean of Manchester
- Brackenbury, Miss, Brunswick Terrace, Brighton
- Bradshaw, John, Jun., Manchester
- *Brigeman, Hon. and Rev. George Thomas Orlando, M.A., Rectory, Wigan.
- Bridson, J. Ridgway, Crompton Fold, Bolton, and Belle Isle, Windermere
- Brierley, Rev. James, M.A., Mosley Moss Hall, Congleton
- *Brooke, Thomas, Armitage Bridge, near Huddersfield,
- *Brooks, W. Cunliffe, M.P., M.A., F.S.A., Barlow Hall Manchester
- Brown, Mrs., Winckley Street, Preston
- Browne, William Henry, Chester
- Buckley, Sir Edmund, Bart., M.P., Dinas Mowddwy
- Bunting, Thomas Percival, Manchester
- Bury Co-operative Society, Bury, Lancashire
- CAINE, Rev. William, M.A., Chaplain County Gaol, Manchester
- Cambridge, Christ's College Library
- Cassels, Rev. Andrew, M.A., Batley Vicarage, near Dewsbury
- *Chadwick, Elias, M.A., Pudleston Court, Herefordshire
- Chichester, The Bishop of
- Christie, R. C., M.A., Manchester
- *Churchill, William, Brinnington Lodge, near Stockport
- *Clare, John Leigh, Liverpool
- Clarke, Archibald William, Scotscroft, Didsbury
- Clegg, Thomas, Manchester
- Colley, T. Davies, M.D., Chester

Cooke, Thomas, Rusholme Hall, near Manchester
Corser, Rev. Thomas, M.A., F.S.A., Stand, near Manchester

*Cottam, Samuel, Wightwick House, Manchester
Coulthart, John Ross, Ashton-under-Lyne
*Crawford and Balcarres, The Earl of, Haigh Hall, near Wigan

Cross, William Assheton, Red Scar, Preston
Crosse, Thomas Bright, Shaw Hill, near Chorley
Crossley, George F., Beech Tree Bank, Prestwich
Crossley, James, F.S.A., Manchester, *President*
Crossley, Croslegh Dampier, Scatcliffe House, Todmorden

Croston, James, Cheetham Hill
Cunningham, William Alexander, Manchester

DARBISHIRE, Samuel D., Pendyffryn, near Conway
Darwell, Thomas, Manchester
Dean, Rev. Thomas, M.A., Warton, near Lancaster
Dearden, Thomas Ferrand, Rochdale
*Derby, The Earl of, Knowsley, Prescot
Delamere, The Lord, Vale Royal, near Northwich
Devonshire, The Duke of, Holker, Cartmel
Dilke, Sir C. W., Bart., 76, Sloane Street, London
Dixon, Jas., Ormskirk
Dobson, William, Preston
Downes, W. F., Manchester
Doxey, Rev. J. S., Milnrow, Rochdale
Durnford, The Ven. Richard, M.A., Rectory, Middleton, Archdeacon and Hon. Canon of Manchester

EARLE, Frederic William, Edenhurst, near Huyton
Eccles, Richard, Wigan
Eckersley, Thomas, Wigan
Egerton, Sir Philip de Malpas Grey, Bart., M.P., Oulton Park, Tarporley
Egerton, The Lord, Tatton Park, Knutsford
Ellesmere, The Earl of, Worsley Hall
Ellison, Cuthbert E., Worship Street, London
Ethelston, Rev. Hart, M.A., Cheetham Hill, Manchester

FEILDEN, Joseph, M.P., Witton, near Blackburn
*Fenton, James, M.A., F.S.A., Norton Hall, Mickleton Chipping Campden, Gloucestershire
Fernley, John, Southport
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